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No. 87-1651

In The

# Supreme Court of the United States

October Term, 1987

**COMMONWEALTH OF MASSACHUSETTS,**

*Petitioner,*

vs.

**DOUGLAS OAKES,**

*Respondent.*

**On Petition For**
**A Writ Of Certiorari To**
**The Supreme Judicial Court**
**of Massachusetts**

## BRIEF AMICUS CURIAE OF CITIZENS FOR DECENCY THROUGH LAW, INC. IN SUPPORT OF PETITIONER

**BRUCE A. TAYLOR**
**2845 E. Camelback Road**
**Suite 740**
**Phoenix, Arizona 85016**
**(602) 381-1322**

***Counsel of Record***
***For Amicus Curiae***

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## INTEREST OF CDL AS AMICUS CURIAE

### Consent

Citizens for Decency through Law, Inc. (CDL) has received consent of the parties to the filing of this brief amicus curiae. Consent of Respondent was received from his attorney, Mr. Richard Vita, Esq., and of Petitioner, from the Attorney General of Massachusetts.

### CDL's Interest in This Case

Citizens for Decency through Law, Inc. (CDL) was founded in 1957 by Charles H Keating, Jr. to provide a means for lawyers to assist prosecutors and police in enforcing and defending obscenity laws, to assist public officials improve and adopt

constitutional statutes and ordinances, and to assist local citizens and community leaders understand the role of the law and legal system in dealing with the social issue of pornography and sexual exploitation. CDL has a staff of former prosecuting attorneys with experience in obscenity cases which is available for this purpose. Mr. Keating and CDL have filed over fifty briefs on the merits and as amicus in the U.S. Supreme Court and have participated in trials and appeals in many states on the side of government and law enforcement officials. CDL also has affiliated chapters, all across this country, of independent citizens who wish to share in the experience of our staff. Such chapters and other citizens groups maintain their own structure and local objectives, but are advised by CDL of the legal precedent in their home

states and other jurisdictions where legal issues are decided that affect local action. Although citizens usually desire fast and certain solutions to their perceived problems, and often misunderstand the restrictions of the law and Constitution on such solutions, CDL maintains that the law can deal effectively with criminal abuses of prostitution, live sexual commercialization, and hard-core pornography. Child pornography is not such a publicly flaunted crime, however, and efforts to deal with its insideous evils are more complicated. The prevention of sexual exploitation of minors requires more extensive solutions and methods than merely attempting to control the traffic in the photographs of child abuse which take the form of sexual conduct and lewd exhibition of the genitals by minors.

Massachusetts sought to protect minors from such conduct and from the exploitation of sexually oriented nudity by minors.

CDL desires that this Court recognize this protection and the legitimate reach of child pornography laws to child nudity and submits this discussion of a few related issues involved in this decision.

* * *

## LAW AND ARGUMENT

Proposition of Law:

I. POST-PUBESCENT MINOR FEMALE BREASTS ARE PRIVATE SEXUAL AREAS ENTITLED TO THE PROTECTION OF LAW FROM SEXUAL EXPLOITATION, AND THE DECISION OF THE SUPREME JUDICIAL COURT OF MASSACHUSETTS VIOLATES THE CIVIL RIGHTS OF MINOR FEMALES BY FAILING TO EXTEND SUCH PROTECTION IN THAT REGARD.

In the case of pre-pubescent children, both boys and girls have only one private sexual area, which is the genital or pubic area. A photograph of a five or ten-year-old girl with only her chest area visible is not "child pornography" since her breasts are not yet developed as sexual organs or private parts. In this regard, pictures of pre-pubescent boys and girls are the same. Only their genital areas are private parts protected by sexual exploitation laws such as that of

Massachusetts, and that of New York as reviewed in New York v. Ferber, 458 U.S. 747, at 751 (1982).

The Massachusetts law under review, Section 29A, uses the term "nudity" as defined in Section 31 of the Mass. General Laws, and is set out by the Court below in Commonwealth v. Oakes, 401 Mass. 602, 518 N.E.2d 836, at 837, n.2 (Mass. 1988):

> "[N]udity" means "uncovered or less than opaquely covered post-pubertal human genitals, pubic areas, the post-pubertal human female breasts below a point immediately above the top of the areola, or the covered male genitals in a discernibly turgid state. For purposes of this definition a female breast is considered uncovered if the nipple or the nipple or areola only are covered. In the case of pre-pubertal persons nudity shall mean uncovered or less than opaquely covered pre-pubertal human genitals or pubic area." [Emphasis added.]

Several states have child pornography statutes which, like

Massachusetts, include the exhibition of minor female breasts as sexual exploitation (many of which are limited to sexually stimulating or erotic oriented exhibitions): Alabama, Colorado, Connecticut, Idaho, Iowa, Kansas, Kentucky, Maryland, Michigan, Mississippi, Nebraska, New Hampshire, Ohio, Pennsylvania, South Dakota, Utah, and Virginia. These laws may also be affected by this Court's decision in setting the scope of the Massachusetts statute.

Massachusetts law carefully distinguished between pre-pubescent private genital areas and post-pubertal genital and female breasts areas. Amicus submits that minor females between the age of puberty and adulthood are entitled to the protection of law from having their breasts sexually exploited, and it is a violation of

their civil rights to exclude these private parts from the reach of child sexual exploitation laws. Just as Congress has an interest in the civil rights of minorities, and therefore the power to pass statutes such as 42 U.S.C. Sections 1983 and 1985, the states have a compelling interest in the privacy rights of minors, and therefore the power to pass child pornography and exploitation statues such as those in New York and Massachusetts. See: Brown v. Board of Education, 347 U.S. 483 (1954); New York v. Ferber, supra; Ginsberg v. New York, 390 U.S. 629 (1968). See also: Annotation: Application of Civil Rights Act to Discrimination in Places of Entertainment, 7 A.L.R. Fed. 415.

A. The Sexual Exploitation Of Child Nudity Is A Legitimate Subject Of Legislative Acts.

In Ginsberg, supra, this Court upheld New York's right to prohibit sales to minors of visual representations of "nudity, sexual conduct or sado-masochistic abuse" which are "harmful to minors". Nudity was defined in the New York law in a similar scope as that of Massachusetts Section 31. See: Ginsburg, 390 U.S. at 645. The New York "harmful to minors" law was held not vague because it employed a test similar to that of obscenity and therefore gave adequate notice of its meaning and reach. The scienter element also prevented innocent applications and provided due process. Ginsberg, at 643-44.

The New York law prevented sales to minors of materials "harmful" to them

because "The State also has an independent interest in the well-being of its youth." Id. at 640. This interest does not depend on the supervision of parents and allows the states to act on behalf of and in loco parentis to children with reasonable and objective protections. The "harmful to minors" laws rightfully condemn material that is "a basic factor in impairing the ethical and moral development of our youth and a clear and present danger to the people of the state". Id. at 641. "Obscenity" laws do not have to meet the "clear and present danger" test because obscenity is unprotected by the First Amendment. Id. at 641, citing Roth v. U.S., 354 U.S. 476, at 486-87 1957). Nor did the federal broadcasting statute, since "indecency" is unprotected in mass communications media such as radio and television. F.C.C. v. Pacifica, 438

U.S. 726 (1978). Child pornography as defined in Ferber is also unprotected and need not pass this stricter test. Where the actual sexual exploitation of minors does constitute a "clear and present danger" to them and the people of the state, as New York found in passing the Ginsberg statute (Ginsberg at 641), and as this Court recognized as a "governmental objective of surpassing importance" in Ferber at 757, the extension in the Massachusetts statute under review is justified.

State legislatures "must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems", as this Court recognized in Young v. American Mini Theatres, 427 U.S. 50, at 71 (1976). As applied in this case, the Massachusetts law provides reasonable assistance in "safeguarding the physical and

psychological well-being of a minor" which was admitted to be a "compelling" interest in Globe Newspaper Co. v. Superior Court, 457 U.S. 596, at 607 (1982). The seriousness of the problem with many forms of child exploitation is also underscored by the caveat in Prince v. Massachusetts, 321 U.S. 158, at 168 (1944):

> A democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens, with all that implies. It may secure this against impeding restraints and dangers within a broad range of selection.

The studies and research of doctors, therapists, and other professionals in the field of child development and abuse were accepted in Ferber at 758-61, and fn.9-13, as supporting the "legislative judgment" that "the use of children as subjects of pornographic materials is harmful to the

physiological, emotional, and mental health of the child". See also the Brief Amicus Curiae filed by Covenant House in Ferber on Sept 9, 1981.

The Court accepted similar findings in Ginsberg, at 641-42, and fn.10, and quoted Dr. Gaylin on an important point central to the issue now before this Court:

> "[P]sychiatrists... made a distinction between the reading of pornography, as unlikely to be per se harmful, and the permitting of the reading of pornography, which was conceived as potentially destructive. The child is protected in his reading of pornography by the knowledge that it is pornographic, i.e., disapproved. It is outside of parental standards and not a part of his identification processes. To openly permit implies parental approval and even suggests seductive encouragement. If this is so of parental approval, it is equally so of societal approval-another potent influence on the developing ego."

A recent study by Dr. Judith Reisman for the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (1987), proves that use of minors in media and men's magazines, and use of adults to portray minors for sexual arousal in such materials, has a devastating impact on youth by sexualizing them in the minds of adults and that this puts minor children at great risk of sexual exploitation and abuse. This study is reproduced as an Appendix hereto and is entitled "Executive Summary: Images of Children, Crime and Violence in Playboy, Penthouse and Hustler Magazines". This study has generated much controversy, and understandable criticism from the pornographic men's magazines and the American Civil Liberties Union, but its logic and proof speak for themselves, as a reading of the report will show. See

also the letter of Mr. John Rabun of the National Center for Missing and Exploited Children, which is also reproduced at page 43 of the Appendix hereto.

The Justice Department recognized that some of the illustrations in the report could fit within the scope of federal child pornography laws and this speaks clearly for the serious issue involved. These images were taken from publicly sold magazines and must be treated sensitively in scientific reports. The law should enforce the same sensitivity in the public marketplace where these pictures originally appeared. A reproduction of this letter from the D.O.J. is also included at page 46 of the Appendix hereto. To prevent further exposure, the photographs in the Reisman report were not reproduced in this Appendix.

(Forty copies of the full report have been lodged with the Clerk of this Court.) The study is particularly relevant here, since this case involved the Defendant-Respondent's taking of similar photos of his fourteen-year-old step-daughter under circumstances which indicate the photos, or other ones of the young woman, would someday have been published in one of these so-called "men's sophisticate magazines", also known as "soft-core porn magazines". The harm in this should be obvious and the legislative interest clear.

The Massachusetts Legislature sought to protect pre-pubescent minors from exploitation of their genital areas and to protect post-pubescent minors from exploitation of the genitals of teenage boys and of the genitals and breasts of teenage girls. This statutory structure encompasses the

private sexual areas of children at their respective stages of development and recognizes the privacy interests the different sexes have at these ages.

That female breasts are recognized as private sexual parts is beyond question. To remove protection from post-pubescent minor females to have their breasts considered private sexual areas in child pornography laws would be to deny them Equal Protection.

In California v. La Rue, 409 U.S. 109 (1972), this Court upheld the right of the states to ban "topless", as well as "bottomless", dancing by females in liquor establishments. This judgment was re-affirmed in New York State Liquor Authority v. Bellanca, 452 U.S. 714 (1981), and City of Newport v. Iacobucci, 479 U.S. ___, 93 L.Ed.2d 334 (1986). These decisions were not changed by that of Schad v. Borough of

Mt. Ephriam, 452 U.S. 61 (1981) where this Court said live entertainment, even if involving nudity, could not be arbitrarily discriminated against without an analysis of First Amendment and Equal Protection principles. The Court in Shad, at 66, did not rule that nude dancing was protected speech, nor did the Court in Doran v. Salem Inn, 422 U.S. 922, 932-33 (1975), but only ruled that a state or city could not pre-censor all such conduct without a rational basis directed at the specific conduct involved. Like the presumption of innocence in all criminal cases, a person's conduct may not be protected or lawful, but the government cannot treat him as if his conduct is totally unprotected or unlawful without due process. Public and commercial nudity is neither protected nor unprotected per se, the context determines the difference.

Justice Douglas and Black agreed in dissent that "no one would suggest that the First Amendment permits nudity in public places". Roth, 354 U.S. at 512. Likewise, no one should suggest that a young woman of 14 or 17 can dance "topless" in a bar or walk "topless" on a beach or down a city street. The Supreme Court of Indiana upheld that state's indecent exposure statute as applied to prohibit "topless" and "bottomless" dancing in bars, independent of the Twenty-First Amendment considerations of La Rue and Bellanca. In State v. Baysinger, 397 N.E.2d. 580 (Ind. 1979), the Court held that bars are public places (like they are in "civil rights" laws) and that women have no First Amendment right to expose their private parts (breasts or genitals) there, even for consenting

male voyeurs. As stated by the Court at 397 N.E.2d, 587:

> Under our statutes and case law, public nudity itself, regardless of a showing of obscenity, is conduct which traditionally has been held to be public indecency, which is within the power of the legislature to prohibit. There is no right to appear nude in public.... In the cases before us it is clear the activity involved is appearing nude or dancing in the nude in bars and is conduct.... The governmental interest in prohibiting conduct that has long been recognized as public indecency is unrelated to the suppression of free speech.

This judgment was affirmed on the merits by this Court in dismissing the appeal in Baysinger, for want of a substantial federal question, sub nom Clark v. Indiana, 446 U.S. 931 (1980). See: Hicks v. Miranda, 422 U.S. 332, at 344 (1975); Hopfmann v. Connolly, 471 U.S. 459, 460 (1985).

The Basinger rule was also upheld as applied to the "Miss Erotica of Fort Wayne" contest at Cinema Blue Theatre in Erhardt v. State, 468 N.E.2d 224 (Ind. 1984).

In O'Day v. King County, 749 P.2d 142, 147-48 (Wash. 1988), the Supreme Court of Washington limited a county ordinance regulation on nude entertainment to "pure conduct and obscene expression", and upheld its reach to nude conduct involving genitals and female breasts only within narrow limits. See also: BSA, Inc. v. King County, 804 F.2d 1104, 1106-08 (9th Cir. 1986).

Many courts assume that nude dancing is protected expression and can only be subject to limited time, place, and manner restrictions. Amicus submits that the states need not restrict indecent exposure and

commercial nudity laws so narrowly in response to this Court's decisions in Schad and Salem Inn, supra, as was done in O'Day v. King County, but that nude "entertainment" of the type in "topless bars", "nude bottle clubs", and even "porno houses" can be prohibited as unprotected conduct under the rule of Baysinger.

Actual sex acts on stage need not be the logical progression of these rulings, as in Mitchell v. Superior Court, 203 Cal.Rptr. 379 (Cal. App. 1984), and State v. House, 698 P.2d 951 (Or. 1985), before the state can protect its interests in public morality against commercial live sex shows. Modern "bump and grind" nude shows are as much the "crass commercial exploitation of sex" as are obscene pictures of such acts. See: Paris Adult Theatre v. Slaton, 413 U.S. 49, at 63, 67 (1973). See also:

SDJ, Inc. v. City of Houston, 837 F.2d 1268 (5th Cir. 1988); Fillingim v. Boone, 835 F.2d 1389 (11th Cir. 1988); D.C. v. City of St. Louis, 795 F.2d 652 (8th Cir. 1986); Intern. Food & Beverage Systems v. City of Ft. Lauderdale, 794 F.2d 1520 (11th Cir. 1986); KEV, Inc. v. Kitsap County, 793 F.2d 1053 (9th Cir. 1986); Guinther v. Wilkinson, 679 F.Supp. 1066 (D. Utah 1988); Bradfield v. Blesma, 675 F.Supp. 382 (W.D. Mich. 1987); Little v. City of Greenfield, 575 F.Supp. 656 (E.D. Wisc. 1983); Dydyn v. Dept. of Liquor Control, 531 A.2d 170 (Conn. App. 1987); City of Daytona Beach v. Percio, 476 So.2d 197 (Fla. 1985); Morris v. Municipal Court, 652 P.2d 51 (Cal. 1982); Mr. B's Bar and Lounge v. City of Louisville, 630 S.W.2d 564 (Ky. App. 1981); People v. Wilson, 291 N.W.2d 73 (Mich. App. 1980); Gabriel v. Town of Old Orchard Beach, 375 A.2d 1065 (Me.

1978); Expo, Inc. v. City of Passaic, 373 A.2d 1045 (N.J. Super. 1977); Wayside Rest. v. City of Virginia Beach, 208 S.E.2d 51 (Va. 1974).

Massachusetts has not escaped the problem of deciding if commercial sex and nudity are "protected" expressions. Cabaret Enterprises v. A.B.C. Comm'n., 468 N.E.2d 612 (Mass. 1984) (La Rue - Bellanca type law struck down on state constitutional grounds); Commonwealth v. Kocinski, 414 N.E.2d 378 (Mass. App. 1981) (obscenity convictions affirmed where bar "dancers" exposed and touched genitals and breasts); P.B.I.C., Inc. v. District Attorney, 258 N.E.2d 82 (Mass. 1970) (stage play "Hair" not enjoinable, since not "lewd and lacivious", but injunction issued to prevent nudity and simulated sex).

Whatever "constitutional" problems exist in deciding whether paying young

women to "dance" nude or semi-nude so bar patrons or "club members" can stare at their genitals or breasts while eating or drinking have not hampered the courts in upholding the police power of cities to prohibit topless or nude "sunbathing" in public. See: South Florida Free Beaches, Inc. v. City of Miami, 734 F.2d 608 (11th Cir. 1984); Williams v. Kleppe, 539 F.2d 803 (1st Cir. 1976); Chapin v. Town of Southhampton, 457 F.Supp. 1170 (E.D. N.Y. 1978); State v. Turner, 382 N.W.2d 252 (Minn. App. 1986).

Whatever their reach and scope, all these laws apply to male and female genitals and female breasts, and would cover all adults and post-pubertal minors. No one would suggest that teenage women can go "topless" on a public beach or in a public place or business, and the reason is that their

private parts include their breasts every bit as much as they do when women reach the age of majority. No artificial distinctions should be made in the case of child pornography and sexual exploitation laws either.

The state courts, on remand from this Court, have refused to follow the decision on constitutional grounds issued in several important cases, and have denied the people and law enforcement much needed remedies. See the remand decisions in New York State Liquor Authority v. Bellanca, supra, at 445 N.Y.S.2d 87, 429 N.E.2d 765 (N.Y. 1981); New York v. Ferber, supra, at 455 N.Y.S.2d 582, 441 N.E.2d 1100 (N.Y. 1982); New York v. P.J. Video, 475 U.S. ___, 89 L.Ed.2d 871 (1986), at 508 N.Y.S.2d 907, 501 N.E.2d 556 (N.Y. 1986); Arcara v. Cloud Books, 478 U.S. ___, 92 L.Ed.2d 568 (1986), at 510 N.Y.S.2d 844, 503

N.E.2d 492 (N.Y. 1986). Such a result could be avoided here by a ruling by this Court in terms of the civil rights of post-pubescent minor females to the Equal Protection of their private sexual areas. It is discriminatory to protect all of a minor boy's privates (genitals) and only protect half of a minor female's private parts (genitals but not breasts). It is not the fault of young women that they have breasts and genitals and that boys have genitals only.

The Massachusetts Legislature granted Equal Protection to minor boys and females, as did at least seventeen other states, in recognizing that a minor female's breasts can be sexually exploited as child pornography and prohibiting such improper conduct. The state Court below took away that protection from the minor females without justifying a departure from this

Court's ruling in Ferber that minors are entitled to protection from sexual exploitation and use in child pornography. This is not an area of law that should be left to a laissez faire option, such as obscenity. Paris Adult Theatre, 413 U.S. at 64. Minor children need and deserve protection from discrimination based on sex and age and the courts, like the state Court below, should not ignore the rule of Ferber when the result is to deny those rights.

B. The Court Below Erred In Striking The Statute As Overbroad On Its Face.

The Court below erred in applying the overbreadth analysis to this statute and should have upheld or construed the law to cover depictions of nudity by minors that could be prohibited as child pornography.

The Supreme Judicial Court of Massachusetts was wrong in Oakes, 518 N.E.2d at 837, when it said it "need not decide whether the Supreme Court would sustain a statute that was carefully directed against the defendant's conduct" in finding the statute "unconstitutionally overbroad" on its face. This Defendant should have to prove the statute vague or overbroad as to him. Parker v. Levy, 417 U.S. 733, 756 (1974). The Court below said the defendant "finds support for his position in New York v. Ferber", at

764-66, that his conduct was "protected speech". In fact, Ferber reversed the New York Court of Appeals for making the exact same error. The "traditional rule" that a person cannot challenge a law that validly applies to him, announced in Broadrick v. Oklahoma, 413 U.S. 601, 610 (1973), was found to be "sound and should be applied in the present context involving the harmful employment of children to make sexually explicit materials". Ferber, 458 U.S. at 767, 771. This use of the "substantial overbreadth" and "personal nature of constitutional rights" doctrines were found justified by the compelling interest in protecting minor children. The Court below in Oakes, at 838, used one hypothetical example as evidence of "substantial enough" overbreadth to strike the whole statute. The example was its assumption that

Section 29A "makes a criminal of a parent who takes a frontal view picture of his or her naked one-year-old running on a beach or romping in a wading pool". Nothing in the record even suggests that the law would be applied in this fashion, and the prosecutors and attorneys for Petitioners have rejected such assertions. The Court below did not even attempt to analyze the applications of this law by the guidelines of statutory interpretation set out for First Amendment laws in Brockett v. Spokane Arcades, 472 U.S. 491 (1985), and in failing to do so it mis-applied Ferber.

In Oakes, at 837, the Court below correctly noted that "defendant's conduct in permitting his stepdaughter to pose naked above the waist cannot fairly be isolated... from the expressive process of taking her

picture". The Court misrepresents the facts, however, in saying that Oakes "took nonpornographic, nonobscene photographs of his fifteen-year-old, consenting stepdaughter who was nude above the waist, in circumstances where no commercial or even noncommercial distribution was intended or occurred". Id. The record and Brief for Petitioner show that the Defendant took the pictures specifically to highlight her fourteen-year-old breasts. He did not accidentally get her exposed breasts on film while taking "innocent" pictures. He took pictures of her breasts. Simple and undeniably. He did so because breasts are a sexually stimulating portion of a young women's anatomy. He had her wear "Frederick's of Hollywood" lingerie to highlight this sexuality.

If he wanted to capture the essence of her personality, or her beauty as a

person, he would have focused on her face, her eyes, her expressions of thought and emotion that make a woman a person.

This form of pornography may not be obscene under the test and "examples" set out in Miller v. California, 413 U.S. 15, at 24-25 (1973), but its focus on her sexuality is certainly "pornographic" as used in footnote 2 of Miller and in Ginzburg v. United States 383 U.S. 463 (1966). As this Court said in Ward v. Illinois, 431 U.S. 767, at 773 (1977), the "Miller examples" were "not intended to be exhaustive", and that Miller did not extend protection to sado-masochistic materials, if obscenely described. Likewise, minor female breasts can be depicted indecently or pruriently and also lack protection.

Respondent's intent and product could also be "indecent" as in F.C.C. v. Pacifica Foundation, 438 U.S. 726, fn. 16 (1978). The "normal definition of 'indecent' merely refers to nonconformance with accepted standards of morality". Pacifica at 740. No evidence exists in this case that it is an acceptable moral standard for a step-father, or any parent or adult or even another minor, to take pictures of a fourteen-year-old girl's breasts. That is not the "community standard" intended by this Court when it mis-used the word "tolerance" in Smith v. United States, 431 U.S. 291, at 305 (1977). If it was, the people of Maine or Mississippi would have to "accept" the conduct of Oakes in this case merely because it is "tolerated" by the highest court in Massachusetts. See: Miller, supra at 32. Surely, such a standard of

morality does not exist in Las Vegas or New York City, any more than it does in Boston or Worcester. If it did, it should be the Respondent's burden to show that such conduct is not only "tolerated" but "accepted". Community standards should be "set by what is in fact accepted in the community as a whole", as the District Court charged in Smith (431 U.S. at 297-98), otherwise the tolerance of the exception would eliminate the norm of acceptability.

The protection of minors recognized in Ferber is necessarily based on the community's "compelling" duty to protect them from sexual exploitation, regardless of whether by the "hard-core pornography" of the obscene, or the "soft-core" exploitation evidenced in this case. The "slight social value" in having pictures available of a young woman's breasts before she reaches the

age of majority and consent are not present here, like the arguable presence in "educational, medical, or artistic works" mentioned in Ferber at 773. The facts of this case are not ripe for the "case-by-case analysis" to test the reach of the Massachusetts law to one-year-old babies on a beach. All this Court need decide here is whether Massachusetts may protect post-pubertal minor female breasts from sexually exploitive photographs. The Court below erred in failing to do so and striking the statute on such hypothetical overbreadth grounds.

C. <u>The Rights Of Minor Females To Be Free Of Sexual Exploitation Outweighs Any Expressive Use Of Such Exploitation</u>.

If young women are entitled to the right to have their breasts considered as private, then the statute protects her civil rights from a denial of Equal Protection and is valid. Whether Defendant Oakes is guilty of sexually exploiting his step-daughter in this instance was for the trial courts of Massachusetts to find beyond a reasonable doubt. The issue here is whether state law can prohibit sexually oriented photographs of breast nudity as child pornography.

This Court denied certiorari review of the decision of the Ohio Supreme Court which upheld a statute prohibiting the mere private possession of photographs of minors engaged in sexual conduct or lewd exhibition of the

genitals. State v. Meadows, 28 Ohio St.3d 43, 503 N.E.2d 697 (Ohio 1986), cert. denied 480 U.S. ___, 94 L.Ed.2d 771, 107 S.Ct. 1581 (1987). That state Court also upheld the Ohio statute prohibiting the private possession of photos of minors "in a state of nudity". State v. Modeen, 28 Ohio St.3d 64, 502 N.E.2d 634 (Ohio 1986), State v. Robinson, 28 Ohio St.3d 65, 502 N.E.2d 634 (Ohio 1986). Two other state supreme courts have also upheld their child pornography possession statutes. Felton v. State, ___ So.2d ___ (Ala. 1988), People v. Geever, 122 Ill.2d 313, 522 N.E.2d 1200 (Ill. 1988). At present, there are at least eighteen states which prohibit the private possession of child pornography: Minnesota, §617.247 (1983); Arizona, §13-3553 (1983); Nevada, §200.730 (1983); Alabama, §13A-12-192 (1984); Ohio, §§2907.321,

2907.322, 2907.323 (1984); Oklahoma, §1021.2 (1984); Washington, §9.68A.070 (1984); Texas, §43.26 (1985); Florida, §827.071(5) (1985); Utah, §76-5a-3(1985); Illinois, §11-20.1 (1985); Kansas, §21-3516 (1986); Georgia, §16-12-100 (1987); Missouri, §573.037 (1987); Idaho, §§18-1507(3)(b) and 18-1507A (1987); South Dakota, §22-22-23.1 (1987); Colorado, §18-6-403 (1988); and Nebraska, §_____ (1988).

The Ohio Supreme Court recently construed the possession of nudity oriented material statute, O.R.C. 2907.323(A)(3), in State v. Young, 37 Ohio St.3d 249, at 252, ___ N.E.2d ___ (Ohio 1988), to prohibit only "conduct which is not morally innocent, i.e., the possession or viewing of the described material for prurient purposes". The Court found that, so construed, the

statute was "not so broad as to outlaw all depictions of minors in a state of nudity, but rather only those depictions which constitute child pornography". Id. The Court also limited the "state of nudity" by a minor to "where such nudity constitutes a lewd exhibition or involves a graphic focus on the genitals". Id. Since the Ohio statute defines "nudity" to include female breasts as well as male and female genitals, it is unclear whether the Ohio Supreme Court continues to allow a "lewd exhibition" of a minor female breast "for prurient purposes" to constitute child pornography. This is a reasonable restriction on the reach of child pornography laws, as argued herein. The language in Ferber, 458 U.S. at 773, regarding the assumption that New York would not "widen the possible invalid reach of the statute by giving an

expansive construction to the proscription on 'lewd exhibition[s] of the genitals" should not prevent this interpretation. In Ferber, the New York statute defined child pornography as only including sexual activity and lewd exhibitions of the genitals, so this Court had no opportunity to decide whether the post-pubescent minor female breasts could be lewdly exhibited as child pornography.

This Court could agree that child pornography involving exhibitions of a minor's private sexual parts (genitals and breasts) are legitimately reached by child pornography and sexual exploitation laws where such exhibitions (even without actual sexual conduct or contact between persons) are "for prurient purposes". This limitation on child nudity would prevent the "morally innocent" portrayals of concern to this

Court in Ferber at 773 and to the Court below in Oakes at 838. Such a limitation to prurient uses was employed to eliminate vagueness in the zoning ordinance in City of Renton v. Playtime Theatre, Inc., 475 U.S. 55-56, fn. 4 (1986), and was the essence of Roth and Ginzburg v. U.S., supra. This Court should correct, however, the misconception in Brockett, supra, that "prurient" is limited to "shameful and morbid" and includes other adjectives to describe a sexual interest beyond a purely normal, healthy interest, such as erotic, lascivious, and an unhealthy or abnormal lust. See: Roth, 354 U.S. at 487, fn. 20; Ginzburg, 383 U.S. at 470; Mishkin v. New York, 383 U.S. 502, at 508-09 (1966); Miller, 413 U.S. at 18, fn. 2; Hamling v. United States, 418 U.S. 87, at 127-31 (1974); Pinkus v. United States, 436 U.S. 293, at 301-03

(1978). See also: Brockett, 472 U.S. at 496-98, 504-05, and fn. 8. This would avoid the abusive restrictions on prurience applied by the Court of Appeals in Brockett, sub nom J-R Distributors v. Eikenberry, 725 F.2d 482, at 490-92 (9th Cir. 1984), and the District Court in Goldstein v. Allain, 568 F.Supp. 1377, at 1385 (N.D. Miss. 1983). Limiting pictures of child nudity to the unhealthy or abnormally lustful, erotic, or lascivious would prevent overbroad applications, provide notice and avoid vagueness, and yet reach the truly pornographic uses of children who are photographed exposing their private sexual areas to the lure of the camera's permanent exploitation.

The error below was in assuming an unconstitutional application and striking the statute in contravention to Ferber and the rights of minor females.

The remedy is to recognize the right of state legislatures to protect the privacy rights of those young women from having their breasts exploited sexually. In this regard, the Massachusetts statute cannot be said to be totally unconstitutional on its face "in whatever manner and against whomever an effort might be made to apply it". Younger v. Harris, 401 U.S. 37, at 53-54 (1971), citing Watson v. Buck, 313 U.S. 387, at 402 (1941).

## CONCLUSION

The Supreme Judicial Court of Massachusetts improperly held that state's child nudity exploitation statute invalid by assuming an unconstitutional hypothetical application. In doing so, the Court below violated the rules of statutory interpretation applicable to child pornography and exploitation laws set out in New York v. Ferber.

More importantly, this decision creates a denial of Equal Protection for the privacy interests of minor females whose civil rights are violated when their developing breasts are not recognized as private sexual areas entitled to protection by society and legislative bodies from sexual exploitation.

Amicus also submits that the dissenting opinion of the Court below was correct and should be adopted by this Court.

For these reasons, in addition to those urged by Petitioner herein, the decision below should be corrected and reversed.

Respectfully submitted,
Citizens for Decency
through Law, Inc.

Bruce Taylor

Bruce A. Taylor
General Counsel
Attorney for Amicus

## CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of July, 1988, three copies of the foregoing Brief Amicus Curiae of Citizens for Decency through Law, Inc., were sent by U.S. Mail, postage prepaid, to:

Hon. James M. Shannon
Attorney General
Phyllis N. Segal, Esq.
A. John Pappalardo, Esq.
Deputy Attorneys General
Madelyn F. Wessel, Esq.
Judy G. Zeprun, Esq.
H. Reed Witherby, Esq.
Assistant Attorneys General
Commonwealth of Massachusetts
One Ashburton Place, Room 2001
Boston, Massachusetts 02108
(617) 727-2200
Attorneys for Petitioner

Richard J. Vita, Esq.
2 Oliver Street
Ninth Floor
Boston, Massachusetts 02109
(617) 426-6566
Attorney for Respondent

All parties required to be served have been served.

Bruce Taylor
Bruce A. Taylor
Attorney for Amicus

# APPENDIX

Executive Summary

# IMAGES OF CHILDREN, CRIME AND VIOLENCE IN PLAYBOY, PENTHOUSE AND HUSTLER MAGAZINES

This research was sponsored by Office of Juvenile Justice and Delinquency Prevention (OJJDP), United States Department of Justice, Project No. 84-JN-AX-K007, and carried out at The American University, Washington, DC, from February 1984 to November 1985 and delivered to OJJDP in November 1987. Principal Investigator was Judith A. Reisman, Ph.D.

While the complete three-volume Reisman Report is available from OJJDP, the agency shelves several drafts of various reports ostensibly written by Dr. Reisman. However, only the *November 1987* Reisman Report has been approved by the Peer Review Board and authenticated by the Principal Investigator. *The Overview, Volume I,* is recommended as a brief (503 page) synopsis of the research project and relevant information. All three volumes total nearly 2,000 pages. For further information contact Dr. Reisman at The Institute for Media Education, Box 7404, Arlington, VA 22207 (703-237-5455).

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# INTRODUCTION

## From *Preventing Sexual Abuse,* Summer 1986

A study to determine how pornography and violence in the media affect the incidence of sexual abuse/exploitation, family violence and juvenile delinquency was recently completed at American University in Washington, DC. The project was funded through the Office of Juvenile Justice and Delinquency Prevention (OJJDP) U.S. Department of Justice.

Dr. Judith Reisman, principal investigator for the study entitled "Children, Crime and Violence in the Pictorial Imagery of *Playboy, Penthouse* and *Hustler*" testified on the findings before the United States Attorney General's Commission on Pornography on November 21, 1985. Visual images of children in sexual and violent contexts were analyzed in 683 issues of the three adult magazines beginning with *Playboy's* initial December 1953 issue through *Playboy, Penthouse* and *Hustler* issues of December 1984. Researchers counted children in cartoons or photographs, and references to children in cartoon/photograph captions.

Each cartoon or photograph was examined for characteristics of the child or adult depicted, the activities in which the child was involved, the nature of the activity, and the state of dress or undress of the child. Pseudo-children (adults dressed and posed as children) and any discrepant body features, such as oversized breasts on small child's frame, were also noted.

The study identified three basic themes: nonsexual, nonviolent activities such as simple memories; violent activities such as murder, maiming or surgical procedures; and sexual activities such as intercourse or a child appearing nude.

A total of 6,004 photographs, illustrations and cartoons depicting children appeared in the 683 magazines. *Hustler* depicted children most often, an average of 14.1 times per issue, followed by *Playboy* (8.2 times per issue) and *Penthouse* (6.4 times per issue).

Findings included the following:

- 1,675 child images were associated with nudity.
- 1,225 child images were associated with genital activity.
- 989 child images were associated sexually with adults.
- 792 adults were portrayed as pseudo-children.
- 592 child images were associated with force.
- 267 child images were associated with sex with animals or objects.
- 51% of the child cartoons and 46% of the child photographs showed children age 3-11.
- More girls than boys were associated with sexual assault.
- More boys than girls were associated with violent assault.

* Almost all depictions of child sexual abuse portrayed the child as unharmed or benefited by the activity.

From 1954 to 1984, these 6,004 images of children were interspersed with 15,000 images of crime and violence, 35,000 female breasts and 9,000 female genitalia.

*Playboy*, *Penthouse* and *Hustler* were chosen for the study because they are the three top-selling erotic/pornographic magazines. Approximately 25% of the professional adult male population reads at least one of these three magazines. In addition, *Playboy* and *Penthouse* are accessible to juveniles since they are available at newsstands, hotel lobbies, airports, college bookstores and in the home.

*Playboy* reaches 15,584,000 people per issue, *Penthouse* 7,673,000 and *Hustler* 4,303,000. This compares to *Psychology Today* with 4,704,000 readers, *Sports Illustrated* with 13,034,000 and *Ms.* with 1,635,000.

## Conclusions and Recommendations:

The study attempted to draw conclusions about the effects of the images on juvenile and adult readers, and explore the possible role of the magazines as sources of sex education.

Several issues were raised for future study:

1. The role of these magazines in making children more acceptable as objects of abuse, neglect and mistreatment, especially sexual abuse and exploitation.

2. The possibility that these images of children reduce taboos and inhibitions restraining abusive, neglectful or exploitative behavior toward children.

3. The possible trivialization of child maltreatment in the minds of readers; and,

4. The consequences of presenting sexual and violent images of children in magazines that call attention to sexual and/or violent activity.

Dr. Reisman recommended the National Institute of Mental Health, the Department of Justice and child welfare agencies cooperate to address the problem of pornography in our society through the use of task forces and research efforts.

She further recommended a voluntary moratorium on child or pseudo-child images until verifiable research can be conducted on the harm factor. Such action by sex-industry representatives could be seen as an act for responsibility based on concern for the welfare of children, rather than an admission of guilt.



# EXTERNAL REVIEW BOARD FOR IMAGES OF CHILDREN, CRIME AND VIOLENCE IN PLAYBOY, PENTHOUSE, AND HUSTLER MAGAZINES:

**Cooperative Agreement #84-JN-AX-K007**

Dr. George Comstock, Samuel I. Newhouse Professor of Public Communication at Syracuse University, is a foremost authority on television and social behavior. His work, in part, has focused on mass media and its effects on social values, social institutions, and, in particular, the young viewing public. Dr. Comstock serves on the editorial boards of several major communication journals, is a member of the National Council for Children and Television and was senior author/editor for the *Surgeon General's Report on Television and Human Behavior* (1978). His extensive work in the area of mass media has yielded numerous books and articles which are seen as a foundation for this field.

Dr. Robert Figlio is an Associate Professor of Criminology at the University of Pennsylvania. His critique of the unauthorized American University draft was helpful in the identification of issues and data requiring clarification, addition and correction. With Dr. Marvin Wolfgang, Dr. Figlio co-authored the Department of Justice "National Survey of Crime Severity." He is the only original peer who was unable to review and evaluate this final technical version written by the Principal Investigator.

Ms. Jane Huntington is a specialist in the area of juvenile justice. She is past Director of the Juvenile Justice Project of the American Red Cross, and served as Juvenile Justice Coordinator for the National Coalition for jail reform. Ms. Huntington has written widely in the area of sexual crime and juvenile behavior.

Dr. Emanuel Landau is an epidemiologist and statistical analyst whose specialty is the critique of large-scale, complex research designs. As a senior statistician, Landau, past Chairman of the American Statistical Association Committee on Statistics and Environment, served as the outside, anonymous, expert selected by the American University to evaluate project methodology.

Ms. Laura Lederer is Program Officer for the L.J. Skaggs and Mary C. Skaggs Foundation, and one of the country's leading experts on pornography. She is author and editor of the well-known work *Take Back the Night: Women on Pornography*, and in 1977 established the organization Women Against Violence in Pornography and Media (WAVPM). Ms. Lederer's unique knowledge of both grant management and pornography research have been an invaluable asset to the advisory board.

Dr. Richard Zakia is Chairman of the Fine Art Photography Department of the Rochester Institute of Technology and brings to the board his expertise on educational psychology, photography,

photographic education, and visual perception. Dr. Zakia published numerous books and articles on photography and visual perception, presented papers, lectures, and conducted workshops in the U.S. and Canada as well as contributing an excellent analysis of photography for the final Volume I Overview for the Reisman Report.

### Supplementary Critiques:

Edward Eichel, is a certified psychotherapist and consultant in Health Education/Human Sexuality and Family Life Education in New York City.

Gordon Muir, M.D., Director of Medical Communications at Glaxo Research Laboratories is responsible for the evaluation of medical research protocol and is also associated with the North Carolina Chapter of the National Committee for the Prevention of Child Abuse.

Linnea Smith, M.D., is a psychiatrist whose professional role in the Collegiate Athletic Community involves the education of athletes and coaches on the treatment of illicit drugs in mainstream, sexually explicit mass media.

Dr. Dorothy Tennov, discoverer of "limerence," past tenured professor of Psychology at the University of Bridgeport, is a clinical psychotherapist, theorist and author of three books on psychology.

Dr. Marianne Wamboldt is a psychiatrist, formerly of the Department of Health and Human Services, Section on Comparative Studies of Brain and Behavior; and Dr. Janet Negley is a psychologist with The California Psychotherapy Association.

## Comments of Members of the External Review Board

### George Comstock, S.I. Newhouse Professor of Public Communications

I have reviewed the draft of your report of November, 1986, *Children, Crime and Violence in the Pictorial Imagery of Playboy, Penthouse and Hustler*. My judgement as a scholar of the empirical investigation of the social influence of the communications media is that:

1. The research meets the usual criteria and standards for such endeavors, and suffers from no problems or weaknesses not common to the genre of research represented.

2. Its findings should be of value to those interested in popular culture, erotica or pornography, and the effects of erotica, pornography, and violence in the media, and particularly to those concerned with the implications of such phenomena for women and children.



3. The synthesis of marketing data, child abuse statistics, the media effects literature, and various psychological formulations relating to media effects is adventuresome, intriguing and an admirable exercise in that necessary human venture, thinking the unthinkable.

The document is of sufficient comprehensibility and completeness for submission to a sponsoring agency as the draft of a final technical version. This was not true of the version prepared by the American University.

### Jane Huntington

I have reviewed the Executive Summary of your final project report and the letters that you sent me.

As you know, I have studied juvenile justice issues as part of my master's course at the School of Justice at The American University, and I have participated in projects funded by the Office of Juvenile Justice & Delinquency Prevention, particularly dealing with early intervention strategies. I must advise you that I am no longer working in juvenile justice; however, as I observed to you in the initial stages of the project, I believe your research would be of interest to child protection workers as well as to any professionals who interact with youthful sex offenders. Again, as I have stated before, I find the "child magnets" concept of particular interest.

Your research presents a longitudinal content analysis of child representations in the three magazines examined. As I see it, the research provides a data base of child images in "mainstream erotica/pornography" (which you state in your introduction was a purpose of this "exploratory research"). Though I am not a researcher and cannot speak to the statistical methodology, my lay conclusion is the same as Dr. Landau's in that the "content analysis did adequately test the hypotheses of the study regarding representation of children in the three magazines with special reference to sexual and violence contexts. The findings are clearly of interest but the possible adverse effects from such presentation cannot therefore be inferred."

Dr. Zakia, also, points out that this was a "survey, a content analysis," and, as such, I agree that it ought to be published. Your research has constructed a base upon which to build further research studies. However, at this point, the research itself cannot be the basis for any conclusions and recommendations, other than for further research and, of course, of the empirical findings of the child images in mainstream erotica/pornography.

## Excerpts from Dr. Emanuel Landau's Review*

Volume I of the report, which represents an overview of the project, presents the necessary background material which the reader should have to understand the relevance of this project to the broader issue. The introduction states that "The overall objective of the study was to ascertain whether and to what extent representations of children exist in *Playboy*, *Penthouse* and *Hustler* magazines. The particular focus of the study was the depiction of "children" in sexual and violent contexts." This project, representing a content analysis of the three mentioned journals, constituted an attempt to deal with the broader issue of "The Role of Pornography and Media Violence in Family Violence, Sexual Abuse and Exploitation and Juvenile Delinquency."

The study was designed as a longitudinal study. The report says "Most importantly, the study provides an exhaustive analysis of the roles played by children in *Playboy*, *Penthouse* and *Hustler* magazines over time" (p.1a).

I have reviewed Volumes II and III of the study entitled "A Content Analysis of *Playboy, Penthouse* and *Hustler" magazines with* special attention to the portrayal of children, crime, and violence with considerable care. The review consisted of several examinations to ensure that I could find no significant error of commission or omission which could bias the result regardless of the overall quality of conduct of the study (p.1b). [Page numbers in this section refer to the original documents.]

Having participated in several large-scale studies involving the preparation of complex coding manuals and training of coders, I appreciated the care with which this operation was conducted. The project clearly demonstrated the awareness of the professional staff to the necessity for pilot or pre-testing and the comparability of the coders' entries. This concern for the form of the questions with its interpretation is needed in any study, but especially in this one where objectivity is so difficult to maintain in the coding group. Many of the questions raised in this review process were also perceived by the Principal Investigator and are discussed in the section on "Limitations of the Study" (p.2).

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*These statements are excerpts from Dr. Landau's 13-page evaluation. On August 13, 1987 Dr. Landau wrote: "Having noted the August 1987 materials planned for delivery to OJJDP, I wish to reaffirm my original August 1986 sentence regarding the methodology used in this research. "This is a sound study, producing high quality data in a complex and difficult area conducted in a scientifically acceptable fashion."



The care attached to coding applied also to the data handling in order to minimize the likelihood of error. Thus far, simple frequencies and cross-tabulations have been carried out. There are a large number of additional unpublished tabulations available from the project files (p.8).

The meticulous care with which the project attempted to deal with the "overall objective of the study...was to ascertain whether and to what extent representations of children exist in *Playboy, Penthouse* and *Hustler* magazines. To describe the environments in which the depictions occurred, the portrayal of crime and violence without children was also studied" (p.3).

The pattern of training for specific questionnaires followed by actual coding represents, in my judgment, an excellent way to maximize efficiency and minimize errors. The text notes that a guide to sexual drug-related slang terms was developed for the child visual and adult crime portions (p.7).

Noticeable throughout the report is the emphasis on quality control. It is clear that quality control was rigidly enforced from the initial assignment of magazines to the completed coding (p.7).

The discussion of "child magnets" i.e., the presence of Santa Claus and fairy tale characters is believed to be new and of interest. The depiction of children as initiating, receiving or observing sexual or violent activity with Santa Claus may be of consequence as is also the appearance of children as adult sexual partners in the fairy tale illustrations (p.3a).

The training of the coders involved a meticulous procedure of training and practice on the Child Cartoon Coding Instrument. Inter-rater reliability was assessed at the conclusion of coding and coders were debriefed to document their unique approaches to the content analysis (p.7).

It is my judgment that this content analysis did adequately test the hypothesis of the study regarding representation of children in the three magazines with special reference to sexual and violence contexts. The findings are clearly of interest but the possible adverse effects from such presentation cannot therefore be inferred (p.4).

Volume I also demonstrates a carefully conducted study of the content of the three journals constituting the mainstream of erotic/pornographic publications (p.4a).

In summary, the statement of limitations notes in detail the shortcomings of this study. However, in my judgment, the authors have tended to overstate the imperfect qualities of this content analysis study. It is a sound study providing high-quality data in a complex and difficult area conducted in a scientifically acceptable fashion (p.12).

## Laura J. Lederer

I write to congratulate you on the successful completion of your study, "Children, Crime, and Violence in the Pictorial Imagery of *Playboy*, *Penthouse* and *Hustler*: The Role of Pornography and Media Violence in Family Violence, Sexual Abuse, and Exploitation, and Juvenile Delinquency." Your research is of tremendous value. It is the first study ever to document the complete representation of children, children depicted in sexual situations, and children depicted in criminal and violent situations in *Playboy*, *Penthouse* and *Hustler* magazines, the three leading mainstream pornography magazines in our country. It documents these images over time, which makes it possible to pinpoint the introduction of such images into the social fabric. It also makes it possible to trace the proliferation of certain themes, such as child assault, child sexual molestation, and incest and to correlate the increases in these images with reportings of real life crimes against children. In addition, the study yielded an enormous amount of invaluable data never before gathered. It is now possible to identify the age of the children portrayed in these magazines and to note that the largest number portrayed were between the ages of three and 11, to identify the race and religion of these children, as well as their sex. The data can be identified for any one of the three magazines, or a pooled figure representing all three magazines can be found. The data also identify criminal and violent activities such as rape, battery and murder. These data can be used by other researchers, as well as police, child protection agencies, physicians, nurses, clinical therapists, educators, government officials and others who now work in various capacities to halt child abuse, child sexual molestation, and incest, as well as all forms of juvenile delinquency.

As a foundation program director of a private philanthropic foundation, I can say that the grant was properly administered and well-used. This was an enormous undertaking: a large-scale study with complex coding processes, housed in a university, which took a good percentage of the original grant amount to cover overhead costs. As principal researcher, you set up the research parameters, tested them with preliminary studies, and then ran the project within a two year time limit, employing over 30 people, including 25 coders, a complete administrative team, and a dozen expert consultants.

I urge the immediate publication of your final report dated November 1986, and its full distribution, by the U.S. Department of Justice and the Office of Juvenile Justice and Delinquency Prevention. I know that the American public very much wants to read the final report, and I believe that our society will reap benefits from it.



## Dr. Richard D. Zakia

Thank you for the opportunity to read your report on "The Role of Pornography and Media Violence..." and to offer some comments. First let me again state my position that the data you have gathered is important and should be made available to serious researchers along with valid qualifying statements and criticism you have included in your November 1986 Report. Let me outline some of the things I find especially valuable in your report:

**1. Benchmark**

Your data on the cartoons in *Playboy*, *Penthouse* and *Hustler* provide a reference point that we never before had. This is important for longitudinal studies and for possible comparison with other similar information; i.e., cartoons and visuals in other magazines.

**2. Methodology**

The instruments you developed for your study and your approach in establishing verbal categories for pictorial information can be very helpful to others.

**3. Correlations**

Your findings on the number of cartoons in which the principal child is "School age to puberty: elementary school age six through eleven" raises an important question. Do national statistics on child molesting reveal a similar situation. In other words are most children that are molested between the ages of six-eleven?

**4. Cartoonists**

Of the several cartoonists mentioned, the one most often used by *Hustler* magazine was Dwaine B. Tinsley by a margin of twice the next most used cartoonist. Can the Tinsley cartoons be isolated and studied between the years 1974 to 1984? This could uncover useful information regarding cartoon codes and possible changes which might have emerged. Do cartoons such as Tinsley's have historical precedence? Having done some visual research in the Kinsey Library on Sex and Human Reproduction at the University of Indiana, I believe they do and can be identified in the collection of pornographic visuals available there to researchers. Some of these visuals are by well known artists of earlier years.

**5. Similar but Different**

The cartoons in all three magazines although somewhat similar are also different. *Playboy* for example is more verbal while *Hustler* is blatantly visual. *Hustler* cartoons also portray more violence and contain ethnic slurs. How do other "girlie" magazines compare?

**6. Syntax**

The placement of cartoons on a page along with specific articles and advertisements, the size of the cartoons, left page vs. right page, black-and-white vs. color is of significance and provides information

not previously available. Your "eye scan" data points out the importance of judging the cartoons for not only what is within the cartoon but also for what lies outside the cartoon. Perceptual psychologists would find this very useful information.

7. **Body Validation**

Your proposed Body Validation instrument could be very useful to researchers in the field. What we see, and sometimes often mistake as a photograph of a nude woman, is often a retouched photograph with "visual transplants". By that I mean we now have the technology to create a real, imaginary, fantasized perfect nude woman. Computers can store pictorial body parts, faces, noses, hands, legs, breasts, etc., and display them on a screen for an artist to composite. The final fantasized Venus can then be directly transferred onto printing plates and then into magazines for the voyeuristic eye. The face of a 20-year-old can be connected to the body of a 16-year-old. Your proposed Body Validation instrument warrants further study and testing.

8. **Comparisons**

Do any of your findings support or question the voluminous Meese Report?

9. **Kinsey Library**

As you know, the Kinsey Library is an important resource for researchers in the field of human sexuality. The library has an outstanding collection of texts and visuals, including a considerable amount of material, historical and contemporary, on the involvement of children in sexual situations. Some of the material is in cartoon form and some pictorial visuals. I am sure that the Kinsey Library would welcome a copy of your report for their collection.

10. **Heuristic**

Another important aspect of your study is its heuristic value; it raises what I would call a Janus question. Looking back into earlier publications, what child cartoons preceded the ones your study found? And looking forward, particularly as the electronic media begins to take over with its moving image and sound, where is this type of erotica headed? We now have an important benchmark for *Playboy*, *Penthouse* and *Hustler* for the years 1953-1984, 1969 to 1984 and 1974 to 1984 respectively.

I hope the Justice Department will soon make your report available to serious researchers in the field. As a member of your peer group I concur with my colleague Dr. Landau that the criticism of your report has been overstated. It has tended to obscure the important data your research has uncovered. It was a survey, a content analysis of particular information. Perhaps it should be formally titled "A Survey of ...".



## J. Gordon Muir, M.D.

Thank you for the opportunity to review Volume I of your report "Children, Crime and Violence in the Pictorial Imagery of *Playboy*, *Penthouse* and *Hustler*."

By way of background, I am a physician with six years of experience in the clinical research departments of two of this country's leading pharmaceutical companies. I have been assistant director of clinical development and associate director of medical communications at the Squibb Institute for Medical Research, and I am currently director of medical communication at Glaxo Research Laboratories. In this environment I have been fully exposed to the principles and practice of sound medical research and its proper presentation. I have also been lately associated with the North Carolina Chapter of the National Committee for Prevention of Child Abuse, and partly because of this interest and what I recently have been learning about child abuse, I feel that the subject of your research is important, timely and of considerable public interest.

Just as physicians (and the public) have had a growing interest in the role of television in child abuse (see Wharton and Mandell, *Pediatrics*, June 1985), there would undoubtedly be a similar interest in the role, if any, of mainstream pornography. Now, for the first time, major documentation has been provided regarding how children are depicted in mainstream pornography and how images of children are related to situations of nudity, abuse, crime and violence. This has to be an important body of data and an important first step, if the methodology of data collection has been sufficiently rigorous. My own view is that the methodology employed here has been more than sufficiently exacting. And, while some modifications may be suggested for the future, I would concur with the statistical reviewer, Dr. Landau, that this is "a sound study providing high-quality data in a complex and difficult area, conducted in a scientifically sound fashion."

My chief conclusions from reading this report are as follows:

1. Children have been extensively sexualized in mainstream pornography. Documentation of this point alone is an important finding.

2. It is clearly established that there has been a pictorial trivialization of child sex abuse—particularly in cartoons. And as Harrison is quoted as saying in this report: "The cartoon is a unique force in modern society."

Socialization of other taboos, in cartoons especially, is also documented.

Bearing in mind that everyone is influenced in some way by what they see and read, it is absolutely essential that the impact of these child representations on both adults and children be further investigated. We are not dealing here with the content of television soap

operas, etc. but with a pictorial medium that is seen to have a record of portraying the breaching of the most sensitive social taboos as a subject for humor. Serious investigation of the impact of this should now begin.

I commend you and your staff for an admirable execution of a complex task performed in a relatively short period of time. I look forward to the Department of Justice making this report available to the medical and child-welfare communities, as well as to the general public.

## Linnea W. Smith, M.D.

The significance of your research cannot be overestimated, that of undertaking the most comprehensive to date content analysis of the three topgrossing erotic/pornographic magazines. This information is an invaluable precursor for the scientific community as well as society to critically evaluate issues of causation and potential for distortion of attitudes on human sexuality and antisocial behavioral impact.

There has been appropriate criticism of those of us in the medical profession in general, as well as those of us in psychiatry specifically, to be more cognizant of the role of mass media and its impact on the well-being of juveniles and adults.

These publications target juveniles as an important part of their readership and aggressively market their product to this segment of sexual identity. Your analysis of the depictions of children in a sexual and/or violent context is especially pertinent. Recent surveys confirm an overwhelming majority of adolescents reported repeated exposure to this material.

Research examining the effect of precocious exposure to pornography on children's attitudes and behavior is seriously inadequate. Children must be assumed vulnerable to adverse health consequences unless and until proved otherwise.

It is imperative that your report be made available immediately to the general public. It is beyond comprehension that additional data currently in the possession of American Univerity is not accessible to you or made available to other researchers.

## Dorothy Tennov, Ph.D.

My Ph.D. (U. Connecticut, 1964) is in experimental psychology with emphasis on learning and on methodology in behavioral science. I conduct basic research, am a consulting psychologist (Lic., Conn), have attained the academic rank of tenured Professor (U. Bridgeport), taught behavioral psychology, research design, and statistics (U. Connecticut, U. Bridgeport, Hunter Coll.), and have published articles in professional journals and three scholarly books. I am a member in good standing of national and international professional organizations including the American Psychological Association and the International Society for Human Ethology. In recent years my



research and theory focused on interpersonal sexual-affectional attractions in a context of the ethology of human reproduction and on the biological and social implications of reproductive technologies.

I have complied with your request that I review "Images of Children, Crime and Violence in *Playboy*, *Penthouse* and *Hustler* Magazines." A full report is to follow, but in summary I feel your research is on the cutting edge of crucial social issues and that you have produced, on a subject of intense controversy, valuable and reliable data. I am most interested in the results of the additional data analyses as well as additional projected research.

I congratulate you on your perseverance in the presence of the unique obstacles that working with these materials produce. The reactions evoked by your work—of officials, participants, colleagues, and the public—to the very subject of pornography reveal an aspect of human nature that must be understood if we are to behave responsibly as a society. In conjunction with other recent data on violence and abuse your findings confirm that our children are in jeopardy.

## Dr. Marianne Z. Wamboldt and Dr. Janet Negley*

The eighteen examples offered for evaluation seemed to be representative of several themes in current pornography: The association of sex with violence, the depiction of adult grown women as children and the association of childhood symbols and fantasies with sexual acts.

In addition to those pictures where women are dressed as girls, I would like to make a few comments on those comics and visuals in which childhood fantasies and heroes are used. As in the series of increasingly more explicit pictures using Wizard of Oz characters, it seems that pornography is seeking to be more and more outrageous... So, we see priests, Santa Claus and the Tin Man in sexual postures... The real difficulty with these images is that they carry messages beyond "isn't this funny—it's so naughty" which are only seen clearly if one gets beyond the initial response or if one is sensitized to the greater issues at play.

The increasing explicitness of the pornographic images is reminiscent of an addiction. More and more is needed to create the same effect. . .But with the number one complaint in sexual therapy being "a lack of desire," one must wonder just what it takes to get stimulated these days. A possibility is that we are all affected by the amount of sexual input and respond by shutting down.

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*Excerpts from Dr.'s Wamboldt and Negley's seven-page critique of eighteen sample images selected from *Playboy*, *Penthouse* and *Hustler*.

Repeated exposure to sexual scenes with adolescent (or younger) girls could stimulate hidden sexual feelings towards young girls which the man had been keeping at bay. There is also an inherent permission given to indulge in this kind of sexual behavior when viewed in the media. Of particular concern is the relationship of step-parent to step-child, particularly stepfathers and stepdaughters.

As mental health professionals, we can postulate that pornography has deleterious effects on some individuals. First of all, some men may have difficulty separating the use of women as sex objects from their everyday dealings with women in their lives. This comment pertains to pornography in general. The use of childhood heroes and fantasies adds even more complexity to the problem.

One possible dangerous effect of these pictures is that they disinhibit the prohibition, making less secure people more aware of inappropriate sexual feelings and more confused about what to do about them. Repeated exposure to sexual scenes with adolescent (or younger) girls could stimulate hidden sexual feelings towards young girls which the man had been keeping at bay.

There is also an inherent permission given to indulge in this kind of sexual behavior when viewed in the media. Of particular concern is the relationship of step-parent to step-child, particularly stepfathers and stepdaughters. These pairs do not share a long history of nurturance; often a stepfather first meets his prospective stepdaughter as she is entering puberty. In fact, the literary story of Lolita describes a situation where the stepfather married the mother because of his attraction to her daughter. Without a history to help suppress sexual feelings, these pairs often must consciously do so. To have media present scenes of child seduction may make it more difficult for men to consciously suppress these feelings.

The magazine editors will surely say they are only interested in stimulating fantasy, not illegal acts. But to a person who has difficulty separating fantasy from reality, the magazine gives tremendously confusing messages; for instance, some men may use the presence of these scenes as support for the notion that "women must like this or they wouldn't have posed for it."

If...adolescents view confusing pictures of "sexualized children" or cartoons about adult men, often fantasy heroes (especially Darth Vader) sexually using children, their dual developmental drives of becoming sexual as well as nurturant adults may blend, blur and be confused. . .adding visual portrayal of child sexual abuse may indeed trigger actual acting out, particularly in younger teens who have not developed good impulse control over their new and overwhelming sexual feelings.



**Edward W. Eichel, M.A.**

In reviewing your research on pornography, I can say from my twenty years of experience as a sexologist that you have gone to the heart of the matter. Let me identify several points that I wish to touch on:

1. Your market research and additional other reviews of the literature are an important contribution to our understanding of the complex role of commercial sex information in our nation's life.

2. As a sex researcher, it is of grave concern for me to discover that the materials under investigation have been instructing both juvenile and adult readers about the desirability of children as sex partners and the harmlessness of early sexual activity for children. The fact that this type of visual education is mass distributed in magazines, I consider another key finding. This makes me wonder about the source of inspiration for some of the bizarre sexual behaviors—auto-erotic asphyxiation, for example, which has been responsible for numerous fatalities amongst juveniles.

3. Your identification of "Child Magnets" in each of the magazines adds fresh insight to the impact of these materials on juvenile readers. This information would be very useful to sexologists, child development specialists, and a broad spectrum of child welfare workers.

4. The attention given to the pairing of violent, sexual, and juvenile stimuli—within this sex education medium—raises the issue of visual communication to new levels of complexity and scholarly concern.

In my opinion you have raised some powerful questions for the research community and provided basic data to assist in answering at least some of those questions. The data you provide on juvenile stimuli suggest a simultaneous arousal of both genital responses and fear responses in some viewers. I consider these findings important and suspect they will be the basis for major steps in resolving the problem of defining "pornography." Congratulations, I look forward to your report being made available to professional researchers and to the public at large.

# CONTENT ANALYSIS OF IMAGES OF CHILDREN, CRIME AND VIOLENCE IN PLAYBOY, PENTHOUSE AND HUSTLER EXECUTIVE SUMMARY


## ABSTRACT

Mainstream erotica/pornography is generally said to portray non-violent adult female nudity for an adult audience. However, a content analysis of *Playboy* (N=373), *Penthouse* (N=184), and *Hustler* (N=126) magazines, December 1953 to December 1984, yielded 6,004 child images as well as an estimated 14,854 images of crime and violence. Received both by juvenile and adult readers, newsstand available child imagery in the context of erotica/pornography increased nearly 2,600% (16 to 412) from 1954 to 1984 peaking in 1978 at 465 newsstand available depictions. Nearly two-thirds of the child scenarios were sexual and/or violent; the dominant age bracket 3-11 years; girls more prevalent than boys and most likely associated with adult males; and racial portrayals almost exclusively Caucasian. Close to 1,000 sexual scenarios included children with adults; 80% of the children were actively involved in all scenes; and each magazine portrayed children as unharmed and/or benefited by adult-child sex.

Juxtaposed with some 50,000 images of adult female nudity, the 6,004 child depictions were also associated with 14,854 images of adult crime and violence. In the latter, young-adult Caucasian males and females were equally victimized with primary offenders young-adult Caucasian males. As the only mainstream newsstand publication of its genre from 1954 to 1968, *Playboy* averaged 17 monthly depictions of children, crime and violence. Since 1975, the addition of *Penthouse* and *Hustler* increased the newsstand available aggregate to 111 monthly depictions of children, crime and violence. In sum, these magazines paired adult female nudity with images of children, crime and violence, for millions of juvenile and adult readers for over three decades.


## INTRODUCTION

The concept of true democracy presumes both freedom of information and adequate public access to truthful information. In 1832 James Madison[1] argued that an informed public was a prerequisite to educated debate and decision-making on social issues. Public debate regarding the role of pornography in child abuse has already begun. Yet, until the present research, little information on the incidence and nature of child abuse in mainstream erotica/pornography [E/P][2] has been publicly accessible. The purpose of this exploratory research has been to provide the juvenile justice systems and the public with requisite information for informed debate on



children, crime and violence in E/P, and to provide researchers with a solid data base for future research and testing of hypotheses. To this end, this study tested three hypotheses: first, that children have been portrayed both sexually and nonsexually in mainstream E/P magazines; second, that crime and violence have been portrayed both sexually and nonsexually in these same E/P magazines; third, that these images of children, crime and violence have been paired with female nudity and graphic sexual display.

## BACKGROUND

The present exploratory research, funded by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), was designed to provide juvenile justice agencies with an extensive data base on Depictions of Children, Crime and Violence in *Playboy*, *Penthouse*, and *Hustler*. The complete Reisman Report in three volumes, constitutes the definitive report by the Principal Investigator. These three volumes are available separately or together from the Juvenile Justice Clearinghouse in Washington, DC. Volume I (503 pages) is The Overview. This volume incorporates a large body of important project information, including materials contained in Volume II, Methods and Procedures (382 pages) and Volume III, The Data Book (approximately 700 pages). The AUTHENTICATED Reisman Report, delivered in November 1987 to the Office of Juvenile Justice and Delinquency Prevention, incorporates clarifications, corrections and additions to the September 2, 1986 draft delivered by The American University to OJJDP. (A chronology of the project report appears on the overleaf of Volume I, p. iv.)

As the first indepth investigation of *Playboy*, *Penthouse*, and *Hustler*—leaders in the commercial sex industry—this project was the subject of extensive press and public attention. On the one hand, the public has expressed an abhorrence of child pornography and of violence associated with sexuality in sexually explicit magazines.[3] Yet, the most prominent of these magazines publicly denied any misuse of children in its content[4] while certain public officials and individuals otherwise noteworthy as proponents of child welfare attempted to dismiss this research, largely because they were sure children were not misused in these popular magazines.[5]

On the other hand, preliminary research by the Principal Investigator had indicated that children had been extensively sexualized in popular E/P.[6] Furthermore, Juvenile Justice and other professionals identified "softcore" E/P as tools employed to lure and indoctrinate children into sexually abusive situations.[7] Child welfare professionals have also observed that victimized children often continue the cycle of violence, frequently becoming juvenile delinquents and/or adult offenders. Based upon growing concerns regarding the role of E/P in child sexual abuse, and the preliminary

work identifying children, crime and violence in these magazines, an exploratory investigation of the most widely read erotic/pornographic magazines was undertaken. The present research focused upon the analysis of children (juveniles), crime and violence in *Playboy*, *Penthouse*, and *Hustler*, the three most popular "softcore" erotic/pornographic magazines read by both juveniles and adults.

## Why Study Mass Media Communication?

Communication researchers tend to debate particular ways in which specific media messages may affect particular recipients and receivers.[8] Numerous communication models have been designed which attempt to precisely replicate the communication process. Despite subtle differences, communication theorists may be said to agree that any communication process has some effect on receivers:

> [I]n most general terms, communication implies a sender, a channel, a message, a receiver, a relationship between sender and receiver, an effect, [and] a context in which communication occurs.[9]

It follows from the above accepted body of communication theory that E/P messages effect receivers in some manner and thus are worthy of indepth analysis.

## Why Study Playboy, Penthouse and Hustler?

Recent data available from Canada confirmed existing American studies of early onset of exposure to E/P. The Canadians found adolescents, ages 12-17 reporting most frequent exposure to mainstream E/P.[10] Moreover, according to recognized market research sources, *Playboy, Penthouse* and *Hustler* maintain the highest readership amongst all E/P magazines,[11] providing "informal sex education" for juveniles and adults since December 1953, inside and outside the home environment. The overall readership can be said to cross all socio-economic boundaries, while a large percentage of readers may be classified as relatively well-educated upscale "change agents." Based upon circulation figures and juvenile justice and delinquency prevention concerns, *Playboy*, *Penthouse*, and *Hustler* were selected for the present examination of children, crime and violence.

## Why Study the Depiction of Children?

Children have historically been exploited in pornography.[12] Yet, prior to this research, it was generally believed that such exploitation was confined to peripheral, "hardcore" pornography, traditionally found on the fringes of society. Research confirms that hardcore child pornography is nearly always of a sexual nature, and that it constitutes a form of child abuse. The current research effort, however, sought to identify nonsexual and sexual depictions of children as well as depictions of crime and violence in "softcore" or mainstream erotica/pornography.



## Why Study the Depiction of Crime and Violence?

The general public has expressed its concern about the juxtaposition of violence and sex within one medium. For example, in the *Newsweek* Poll by Gallup (March 18, 1985) 73 percent of respondents believed explicit sexual magazines, movies and books lead some people to commit rape or other sexual violence while 93 percent called for stricter control of magazines displaying sexual visual violence. Moreover, the concern about the association of sex and violence is supported by the body of research on media depictions of crime and violence. Here, it is generally conceded that gratuitous depictions of crime and violence have been known to precipitate aggressive behavior.[13] The present investigation: a) established the general context of crime and violence in which child depictions also appeared, and b) captured information on both the nonsexual and sexual depictions of crime and violence in the context of mainstream erotica/pornography.

## Why Study Cartoons?

Approximately two-fifths of the images examined were cartoons. Research confirms that adult readers of E/P magazines commonly rate cartoons as favorite features, while further evidence suggests that juveniles are also drawn to the cartoon feature.[14] The cartoon has its own artistic and historic tradition. By its very nature, the cartoon has a way of overstating, stereotyping and exaggerating its case. Similar to other art forms, the cartoon demonstrates a view of life, of an issue, of an event, or of a people. While appearing as light and guileless humor, the vast body of cartoon research documents cartoons as a sociopolitical art form. It is speculated that some sort of "Socialization of Taboo Ideas" often used the cartoon format to a) circumvent readers' resistance by b) humorously trivializing existing taboos. Based on its historical and popular role in mainstream E/P, an examination of E/P cartoon messages about children, crime, and violence is appropriate.

## Why Study Photographs?

Almost half of the total images examined were photographs. Photographs are generally viewed as accurate fair representations of reality, with little public awareness of the illusions inherent in the photograph.[15] Research identifies such illusion as the result of professional skill and knowledge: The making of the photograph via lighting, camera angles and often composite photography, and its professional reproduction into an artistic product. Upon reception, the child or adult interpretation of the photographic scene takes place, without need for cognitive effort or attention. Since the great majority of E/P pages contain photographic depictions, it is appropriate to examine any widescale circulation of photographic messages pertaining to children, crime and violence.

## METHODOLOGY

1. *Development of Instrumentation*: Utilizing standard content analysis methodology, four discrete instruments were designed, tested and implemented: 1) child cartoons (excluding comic strips), 2) child visuals (illustrations and photographs), 3) crime and violence cartoons (excluding comic strips and child cartoons), and 4) crime and violence visuals (illustrations and photographs, excluding child visuals). The final child cartoon instrument contained 114 variables, child visuals 75, adult crime and violence cartoons 35, and adult crime and violence visuals 49, yielding 273 variables and 12,126 cases.

2. *Coders*: Twenty-two coders over 21 years of age were employed (64 percent female, 36 percent male, 14 percent Black, 86 percent Caucasian, 95 percent college graduates). The project retained a clinical psychologist who held one-hour group sessions each week.

3. *Training*: Coders learned Critical Viewing Skills via great works of art. Following this, content analysis training followed the Krippendorff process. Each coder underwent test trials and group training blocks in the use of the "Coder's Portfolio;" coding instruments, coding manuals and sheets, the Cartoon/Visual Guide, the Emotional Expression Guide (EEG), and the Age Evaluation Guide (AEG).[16]

4. *Materials*: From December 1953 to December 1984, all issues (N=683) were coded for depictions of children: *Playboy* (N=373), *Penthouse* (N=184) and *Hustler* (N=126). Magazines missing in the collection were coded at the Library of Congress. A 42 percent random sample was coded for depictions of cartoon and visual crime and violence.

5. *Magazine Distribution and Instrument Handling*: Coders received a random distribution of magazines in their library carrels, marking instruments with a red pen and personally initialing any changes in analysis. A random selection of two coding sheets per coder per week were checked for accuracy, original coding sheets copied and held in locked metal cabinets for safety while originals were batched and delivered for key punch and data entry to the contracted key punch agency.

6. *Inter-Rater Reliability Measures*: Inter-rater reliability was computed at 0.87 in the pilot study and subsequently, 0.85 for child cartoons, 0.83 for child visuals, 0.81 for crime and violence cartoons, and 0.85 for crime and violence visuals.

## CONCLUSIONS

The present research findings quantify the nature of children, crime and violence imagery in over three decades of *Playboy*, *Penthouse* and *Hustler* magazines. Sexual and nonsexual child depictions and sexual and nonsexual crime and violence depictions were common themes throughout all three magazines. The pairing of these themes over time



with images of adult female nudity and graphic sexual display are pertinent to the current debate on erotica/pornography.

Contrary to popular belief, the depiction of sexual and nonsexual child abuse has not been limited to "hardcore" pornography. It is surprising to many that in 1954 *Playboy* delivered 170 images of crime and/or violence to the public. Total newsstand depictions increased 650 percent across all three magazines by 1984. Looking at children, the *Playboy* only distribution of 17 child images in 1954 were increased—across all three magazines—2,600 percent by 1984. Since May 1954 children have been documented as desiring of and unharmed by adult sexual interactions in these "softcore" magazines. Moreover, the present research found children depicted as viable targets of both sexual and nonsexual physical abuse, documenting a trivialization of child abuse. It is now up to the public and professional communities to document the role of mainstream erotica/pornography in children's lives and child abuse.

An unforeseen finding may be the estimated 27 percent of *Playboy*, 33 percent of *Penthouse* and 47 percent of *Hustler* cartoons and illustrations identified as "Child Magnets." Briefly, Child Magnets are features which are generally unique to the children's world of entertainment (e.g., books and television), and known to attract child readers/viewers. Examples of child magnets are full-color, three-dimensional pop-ups and cutouts, coloring books, paper dolls, Santa Claus, fairy tales, cowboys and indians, Donald Duck and Mickey Mouse, choo-choo trains, etc. Since evidence confirms the large juvenile readership of these magazines, the unique quality of Child Magnets may be viewed as a technique both catering to, and attracting, a juvenile audience. Therefore the depictions presented in "Child Magnets" may be presumed to be of special public interest and concern.[18]

The body of research on sexual arousal suggests that acts of child sexual molestation by some vulnerable juveniles or adults are precipitated if one achieves orgasm via fantasies of sex with children. Similarly, the body of research on media and aggression documents depictions of violence as precipitating aggressive responses in certain vulnerable viewers. Therefore, it appears of compelling public concern that the present research documents a contextual association of three discrete stimuli: 1) adult female nudity and graphic female sexual display, 2) neutral, sexual and violent child depictions, and 3) depictions of crime and violence. The magazine genre evidences a unified culture and world view which incorporates all three stimuli: pairing the arousal to an adult sex object with child sexualization and crime and violence. Thus, it is not unlikely that some vulnerable juvenile and adult receivers may fuse child depictions with arousal to sex (genital stimulus) and/or arousal to violence (aggressive stimulus).

## RECOMMENDATIONS

*Dissemination of Information*

These findings should be provided to public agencies, educators, policymakers, parents and juveniles. Distilled into dispassionate, concrete components (i.e., charts, graphs, statistical tables and explanatory narrative), the information is now ready for public access. Such access means that both adults and juveniles may objectively assess, critique, and debate this issue without requiring exposure to primary sources.

*Education*

Evidence and anecdote confirm extensive juvenile and adult exposure to, and reliance upon, the informal sex education provided by these magazines. Thus, it is only realistic to implement these research data into nonexplicit, nonexploitive school programs as well as other modes of juvenile guidance. The findings should be provided in wholesome educational formats using slide presentations, booklets and videotapes (a preliminary videotape has already been prepared by the Principal Investigator). The use of underage models by the sex industry, the entry of increasing numbers of juveniles into prostitution and the growth of juvenile pregnancy suggest the need for a critical examination of the notions of sexuality which have been and are now presented to youngsters by these informal sex education materials. Use of the suggested educational formats addressing mainstream erotica/pornography could facilitate creative discussion by youth regarding the role of these materials in juvenile sociosexual behavior.

*Training*

Beyond dissemination of the research findings, training in crime site data collection should be conducted. Techniques developed for data collection should be taught on several levels: justice, law enforcement and child protection teams; health professionals such as physicians, nurses, clinicians and counselors; secular and religious educators; parents and juveniles. A data base on the distribution and use of E/P is vital for future policy making. In addition, such data may potentiate revealing lines of questions and may serve as evidence from point of arrest to final case disposition and sentencing.

*Research*

As in most large scale data collection efforts of this nature, due to time restrictions, only a limited amount of analysis was conducted, leaving it to other researchers to more fully explore the policy questions suggested by these data. The voluminous data base provides extensive opportunity for future analyses on mainstream erotica/pornography. The present investigation should facilitate continued and innovative research on erotica/pornography in general and its specific influence upon juveniles in particular. Time series should be conducted across all magazines on all variables. For example, when were child images juxtaposed with violence, sex or crime imagery and



text? Special mention should be made of the potential for change exhibited by these magazines during the duration of the present research project. While under direct scrutiny, there appeared to be a marked change in the treatment of children, crime and violence, particularly in the most popular of these magazines. Thus an ongoing monitoring system should yield valuable changes in the editorial policies of these magazines. Society can no longer avoid recognizing that sophisticated communication technology requires equally sophisticated techniques of analysis.

*Age of Consent*

Finally, based upon the research findings on the use of children, crime and violence in mainstream erotica/pornography, those recommendations proposed by the Attorney General's Commission on Pornography (1986) are all strongly supported. The content analysis of *Playboy*, *Penthouse* and *Hustler* uncovered a steady escalation of graphic depictions from 1954 to 1984 progressing from simple female nudity to those described by the Attorney General in his discussion of obscenity:

> ...child pornography, sado-masochistic scenes, rape scenes, depictions of bestiality or excretory functions, and violent and degrading images of explicit sexual conduct...[19]

Arguments supporting mature age-of-consent parameters for sex industry employees appear to be reasoned and compelling, based as they are on the notion of youthful vulnerability. As the three magazines examined do include substantial displays of the above activities singled out by the Attorney General Meese in his October 23, 1986 press conference, it is proposed that *Playboy*, *Penthouse* and *Hustler* magazines be included in the Commission's recommendation that sex industry models be twenty-one years of age or older. Similarly, publishers should be required to maintain records proving that models are twenty-one years or older.

In addition, a voluntary moratorium of child depictions (in cartoons, illustrations and/or photographs)—by all sex industry publications—is urged until such time that sophisticated research techniques yield adequate data on the harm factor.[20]

## Notes

1. Letter from James Madison to W.T. Barry (August 4, 1832), reprinted in *The Complete Madison 337* (S. Padower ed. 1953).

2. The slash in "erotica/pornography" (E/P) is intended to indicate a separation or a bridge between erotica and pornography. For the definition of E/P in the present research, see Reisman's *Overview of Project* (Volume I), "Working Definition," (p.27). For additional definitions, see "Central Terms" in the Attorney General's Commission on Pornography (1986, pp. 227-232).

3. See for example, *Newsweek* Poll by Gallup (March 18, 1985), wherein 73 percent of respondents believed explicit sexual magazines, movies and

books lead some people to commit rape or other sexual violence while 93 percent called for stricter control of magazines displaying sexual visual violence.

4. See for example, *Playboy* (1985, December): "If other magazines are publishing cartoons of 'gang rapes of children, fathers sexually abusing daughters, benevolent or father figures raping or murdering young girls,' *Playboy* never has, never will" (p.16). For evidence to the contrary, see *Overview of Project* (Volume I), "Appendices A-L."

5. See for example, commentary by Senators (1985, May). In Reisman [Statement], *Oversight [Hearing] of the Office of Juvenile Justice and Delinquency Prevention.* Committee on the Judiciary (Serial No. J-99-23), (pp. 152-175). Said Senator Spector: "This subcommittee has reviewed a great deal of this kind of literature, I have never seen an actual picture of a crime being committed against a child" (p. 64).

6. See Bat Ada (Reisman) and Lederer (1980). Playboy isn't playing: An interview with Judith Bat Ada. In L. Lederer (Ed.) *Take back the night: Women on pornography* (pp. 111-124).

7. For more extensive information see *Overview of Project* (Volume I: Literature Review): "Research on Child Abuse" (pp. 62-67.), and "Research on Erotica/Pornography as an Information Delivery System"; "Research on the Role of Erotica/Pornography Among Children and Adolescents" (pp. 28-30).

8. Ibid. "Research on Mass Media as an Information Delivery System" (pp. 30-38), and "Content Analysis as a Mass Media Research Technique" (pp. 55-58).

9. See McQuail and Windahl (1981). *Communication models for the study of mass communication* (pp. 3-4).

10. See the *Attorney General's Commission on Pornography,* (1986, July), p. 916. Also see Hass' research *Teenage Sexuality: A Survey of Teenage Sexual Behavior* (1979). In chapter 12, "Teenagers' Responses to Pornography" (pp.153-161), teenagers discuss the influences of erotica/pornography (particularly *Playboy* ) in their personal and sexual lives.

11. For more extensive information see *Overview of Project* (Volume I: Literature Review): "Research on Erotica/Pornography as an Information Delivery System" (pp. 22-29), and "Market Research on *Playboy, Penthouse* and *Hustler"* (pp. 59-61).

12. Ibid. "Research on Child Abuse" (pp. 62-67), and "Research on the role of erotica/pornography among children and adolescents" (pp. 28-30).

13. Ibid. Reference is made to crime and violence in "Research on Erotica/Pornography as an Information Delivery System" (pp. 22-30), "Research on children, television and aggression" (pp. 32-38), and "Content Analysis as a Mass Media Research Technique" (pp. 55-58), and "Research on Child Abuse" (pp. 62-67).

14. Ibid. "Research on Cartoons and Humor as an Information Delivery System" (pp. 39-44).

15. Ibid. "Research on Photographs as an Information Delivery System" (pp. 45-54).

16. For extensive information see Reisman's *Methods and Procedures* (Volume II). In addition, the "Research Parameters and Limitations (RPL)" are located in *Overview of Project* (Volume I, pp. 68-117).



17. For extensive data presentations, see Reisman's *Data Book* (Volume III). A compendious overview of Selected Findings and Discussion of Findings are located in *Overview of Project* (Volume I, pp. 118-162). In addition, the seven preliminary studies conducted during the present research project are discussed in (Volume I, pp. 163-185).

18. For additional information on the Child Magnet sutdy, see *Overview of Project* (Volume I: Preliminary Studies), "Child Magnets," (pp. 163-169).

19. This quote is from the *Washington Post* article "Meese forms anti-pornography task force" by H. Kurtz (October 23, 1986, p. A21).

20. The concept of a voluntary moritorium was raised by the Principal Investigator in the testimony delivered to The United States Attorney General's Commission on Pornography, Miami (November, 1985).

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*Organized Crime*. Supplementary testimony requested by The United States Attorney General's Commission on Pornography, New York (p. 1402).

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*The bibliography is limited to references in the executive summary and the first author's pertinent writings. A comprehensive bibliography is included in the *Overview of Project*, Volume I.



# A BRIEF ANALYSIS OF THIRTY-SIX CHILD SAMPLE CARTOONS AND PHOTOGRAPHS FROM PLAYBOY, PENTHOUSE AND HUSTLER

Whatever happened to childhood? The above *Washingtonian* cover portrays two five- to six-year-old children, apparently siblings.

perusing *Playboy* magazine. This picture may be seen as a dramatization of actual data which identify *Playboy, Penthouse,* and *Hustler* magazines as primary sources of sexual education, entertainment, stimulation and guidance for child and adult consumers. Our research considered these magazines with due regard for their widespread, long-term use as sex education by children as well as adults. Small children (and some adults) are often unable to read, and thus attend to pictures more than to captions. With this in mind, project analysts (coders) were trained to mask off captions before determining the pictured children's ages. Until "caption masking" was standardized, the age-inappropriate nature of much child text and imagery commonly caused coders to inflate children's ages by more than five years (e.g. judging a four-year-old as nine-years, etc). It is similarly urged that readers mask the captions of the attached 36 sample images to assess child ages. (To guide objective analysis we developed the Age Evaluation Guide presented in Volume II of the final "Reisman Report.") Remember, it can be said that images are more speedily received and longer retained by the brain than is text.

The Principal Investigator's analysis reflects a) Ph.D. in Speech Communication from Case Western Reserve University with a specialty in mass media effects, b) expertise as a multi-media art educator for the Cleveland Museum of Art, the Milwaukee Public Museum, the Los Angeles Skirball Museum, and *Scholastics Magazine,* New York, and c) an award-winning professional career creating educational "music videos" for both public and commercial television.

Space limited this analysis to children and drugs. See The Institute for Media Education (TIME) for a portfolio of sample crime and violence cartoons and visuals in the three magazines.

## I. PLAYBOY "DRUG EDUCATION"* CARTOONS

*Education: Cultivation and training, as of the mind; the acquisition or imparting of knowledge...mental training along a certain line.*

1) Grandmother Enjoys Marijuana (9/72, p.195). A hip grandmother enjoys the modern amenities of marijuana suggesting both the hominess and the harmlessness of drugs for juvenile and adult readers.

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*NOTE: COVER THE CAPTION FIRST. NEXT, READ TEXT AND DETERMINE THE AGE OF CHILDREN IN CARTOON. Based upon a found perceptual/behavioral bias toward inflating children's ages in cartoons due to precocious captioned language, it is crucial to cover captions for a more accurate assessment of children's chronological ages.



2) Young Children Enjoy Marijuana (12/70, p. 296).* Two small brothers, about ten years of age, link the joys of Christmas with marijuana use, suggesting both the hominess and the harmlessness of drugs for juvenile and adult readers.

3) Women Enjoy Illicit Drugs (6/77, p. 201). Women describe use of cocaine and other illicit drugs as an integral part of party entertainment, suggesting the advantages of "recreational" drug use for both juvenile and adult readers.

4) Parents Enjoy Marijuana (3/70, p.221). Parents and other "elders" learn to enjoy youthful drugs, suggesting both their hominess and the harmlessness for juvenile and adult readers.

The four cartoons in this set are themes representative of the data on child and drug images in *Playboy,* as well as those in *Penthouse* and *Hustler* (see the "Reisman Report" Volume III). Hundreds of cartoons, fiction and editorials educate readers to the notion that child and adult drug users are adventurous risk-takers who do no harm to self or society. Documentation of *Playboy's* funding and legislative lobbying role for NORML (National Organization for the Reform of Marijuana Laws) and for the decriminalization and acceptance of all illicit drugs in the USA, is available through The Institute for Media Education (TIME).

## II. PLAYBOY CHILD "SEX EDUCATION" CARTOONS

5) Implied Incest (3/72, p.163). The "Teddy" cartoon is a full page color image describing a sexual scene between a female child and a male adult. The story takes place in mid-day (based upon the light violet of the window scene) and in a middle to upper class home (based upon the dormer window, well kept furnishings, violet wall-to-wall carpeting, clear possession of room by the lone child, etc.) The artist, Ffolkes, typically draws this child in his cartoons: a girl of about seven to eight years, large wide eyes which occupy nearly half of the face, an unformed nose and cupid bow mouth. But for the exaggerated breast development, her polka-dot hair bow and yellow curls complete an unambiguous pre-school look. Since the exaggerated breasts deliberately confuse the reader's age evaluation, place your finger over the budding breast to determine the holistic age information provided. Ffolkes creates the overall impression of a very young child by simultaneously linking breasts with a child-like face and general body, a flowery illustrative technique, a doll house, teddy bear and ball.

The story is of child sex for money (prostitution). Cartoonist Ffolkes has the child cheerily blame her "teddy" for the unexpected price, portraying the youngster as mercenary and more clever than the

adult male offender. Thus, Ffolkes "equalizes" the child and adult in his drama, suggesting that the male, not the child, may be victimized, tricked and exploited. In addition, the casual safety of the man's mid-day entry into the bedroom of the already nude female child and his shock at a charge (blamed on "teddy"), would imply some sort of kinship pattern; father, uncle or step-dad, etc. Some may question the incest implication or prefer to see this as an adult prostitute dressing as a child, an equally problematic "joke". However, a complete review of Ffolkes's 35 child cartoons presents an identifiable artistic pattern of nude female children in bed with men, women and other adult family members (e.g. "Uncle William"). Furthermore, as *Playboy* has become aware of the Reisman research activity, Ffolkes has lately abandoned these child-adult sex dramas for other themes.

It is relevant that the male's appearance, his age, race, white collar and blue surge suit, identify him as a similar profile to millions of *Playboy* readers. This child molestation drama suggests intercourse may occur and is part of a documented *Playboy* claim of adult-child sex harmlessness.

Reality is in contrast to the Ffolkes humor mythology. For, should a child of this age be penetrated by the sex organ of such an adult male, the child would commonly sustain significant, often permanent, physical (as well as emotional) trauma. Here, as throughout hundreds of similar "jokes," children are seen as sex objects for some normal and pedophile juvenile and adult readers.

6)Uncle/Incest (5/74, p. 205). As in "Teddy", Ffolkes again uses a young child (adding a bow, curls and exaggerated breasts) for an incest/trickery/statutory rape story. Ffolkes has the child describe an apparent statutory rape by her overweight, elderly, uncle as a fun game. Typical of most *Playboy* child sex abuse humor is the adult use of "games" to trick children into first degree sex assault with no physical or emotional harm resulting to the child.

7) Sexual Molestation (10/71, p. 166). Note, Interlandi's seven- to ten-year-old child appears older than does Ffolkes's youngsters (sans Ffolkes's exaggerated breasts). Interlandi insinuates that his female child is experienced with hands-on sexual molestation, for we are told she is comparing this attack with those past. As in the "Teddy" cartoon, the male offender (a tossled, now robed, neighbor, teacher, uncle, friend, etc., lighting his "after" cigarette), is the more innocent of the two characters. This *Playboy* sex education cartoon claims the sexually savvy nature of the child who, as always, is not physically or emotionally harmed by a man's suggested full sexual assault.

8) Gang Rape by Adult Friends/Beast/Objects (3/78, p. 231).



Again Ffolkes uses the culture of childhood to set his scene. He places his exaggerated breasts, bow and curls upon a "Dorothy" likely raped by all three cheery Wizard of Oz friends. An immobile policeman stands by providing no movement toward chase or arrest. This particular sex and violence child assault joke is rare for *Playboy* as it includes some suggestion of harm (although humorous) and sexual force (versus trickery) of the child.

## III: PENTHOUSE CHILD "SEX EDUCATION" CARTOONS

9) Child Assault (11/76, p. 92) "Straight" sex between an apparent adult and a five- or six-year-old is not seen as "deviant." The *Penthouse* sex education cartoon implies the child as mature, mercenary, promiscuous and unharmed by sexual intercourse.

10) Prostitution/Homosexual/Orgy (2/79, p.60). *Penthouse* proposes, as above, the precociously natural prostitution of children, suggesting orgy/homosexual activity with adults as harmless and funny. This child is seen to be about three to five years of age.

11) Statutory Rape by Object (5/84, p. 137). The use of fairy tales by pornographers is discussed in greater detail in the "Reisman Report" Volume I. Here Dorothy was depicted grinning, voluntarily grasping the Straw Man with her arms and legs, while her two protectors casually observe the activity. Again, the idea of "adult" and bizarre sex as harmless to the child is the sex education presented.

12) Child Assault (11/82, p.171). Artist Bill Lee applies the Ffolkes technique: very small child with exaggerated breasts. The nude "conservative politician" in bed with the nude child suggests sex has pleasantly taken place. As with "Uncle William," (and Interlandi) the child places a happy phone call to mom while the man smokes his "after" cigarette. Harmlessness of adults tricking children into sex is the sex education presented.

## IV: HUSTLER CHILD "SEX EDUCATION" CARTOONS

13)Incest/Father Assault (5/84, p. 15). Artist Dwaine Tinsley has a father attack his teen-age daughter. She appears frightened but resigned. Some emotional harm of sexual violence is implied, though apparently disregarded by Tinsley's father character.

14) Abortion (2/79, p.85). One of dozens of similar *Hustler* abortion "jokes." Hundreds of "birth" jokes in all three magazines describe the genre's systematic portrayal of birth as producing generally illegitimate, deformed, and/or undesirable offspring.

15) Sexual Assault in Children's Public Space (3/77). This Tinsley story provides "Chester the Molester" (a monthly feature) with a playground victim. Noting the smiling face of the potential victim and the unusual way in which the child's legs are opened as she goes toward Chester, Tinsley suggests here that children may seek, but surely are unharmed by such sexual assaults. Children's assault by fathers/neighbors/uncles/Santas/politicians/ministers/fairy tale friends, in the child's private space (home) and /or public space (e.g. playground) is common in all three magazines. All three describe children as sexual "targets" with neither a safe place nor an adult person (male) they may expect to trust.

16) Kidnapping Children (10/77). *Hustler* generally builds stories around the kidnapping of small girls in the monthly Chester activities. These bound children appear apprehensive and "Chester the Molester" is naked. Tinsley specializes in portraying fearful faces on his children and his later cartoons often used much more graphic sexual scenes than this in 1977. However, the children here are treated with as little concern for the harm of adult sex assault as are the *Playboy* Ffolkes smiling children.

## V: SANTA CLAUS (RELIGION) IN PLAYBOY AND PENTHOUSE CARTOON HUMOR*

17) Cannibalism of Boy (1/77, p.221). Here *Playboy's* Santa appears to have cannibalized a boy whose clothing is piled on the floor at right. Santa's pointy, sharpened teeth and bloody handkerchief clearly indicate the child was "dinner." A separate study of the treatment of religion and Santa, in all three magazines, identified the treatment of these themes as systematically violent and deviant. (Preliminary findings on this study are available from TIME).

18) Bestiality (1/79, p.360). *Bestiality between wives and the family dog, etc., is a common *Playboy* theme and reported in the findings under "crime." It is noteworthy however, that one of the few *Playboy* male characters to be portrayed in bestiality is Santa Claus. The significance of such images—particularly including Santa—for millions of children, voluntarily and involuntarily, viewing these magazines cannot be overstated.

*NOTE: This "childless" Santa cartoon (#18) is presented as a point of information due to Santa's emotional/spiritual role in most children's lives. Additional Santa analyses are available through the institute (TIME).



19) Sadistic Sexual Assault (12/74, p.87). Here the small girl in *Penthouse* is portrayed as pained, and the lyric supports the notion that a rape is taking place. Upon closer inspection we find that while Santa's pants are down, the pants are still ON the child. "Public" adult-child sex and violence (rape) is the suggested entertainment and sex education theme. See Drs. Wambolt and Negley's commentary on this cartoon and 17 other images appendixed to Volume I of the "Reisman Report."

20) Child Murder (12/77, p. 208). Killing of boys is portrayed as humorous in this bloody *Penthouse* image of a "good boy" shot by Santa. The genre regularly uses Christmas and Santa as its holy or spiritual reference. Hence, it is important to note that all three magazines portray Santa consistently as an immoral, violating or violated male.

## VI: PLAYBOY CHILD "SEX EDUCATION" PHOTOGRAPHS

21) Nude adolescent and "Rubber Ducky" (7/85, p.133). Following the announcement of this research, although loudly denying their history of child sex abusive imagery, *Playboy* and *Penthouse* drastically reduced the numbers and nature of their sexually assaultive images of children. This 1985 photograph was part of the genre's many subtle attempts to retain the child in sexual scenes. The yellow duck (called her "rubber ducky") in this model's hand, the oversized red high-heeled shoes (taken from mommie's closet?), the knock-kneed long, adolescent legs and narrow hip line, white stockings with yellow duckies, and the suggestive text, testify to *Playboy's* attempt to circumvent the juvenile and adult pedophile and normal reader's resistance to sexualized images of children, stimulating readers with "child" arousal stimuli.

22) Incest/Father/Rape (11/71, p.120). This incestuous photograph has been assessed by computer air-brush experts as a cut-and-paste image of both an adult female and a young child, air-brushed together to arouse the reader by the child imagery. The pig-tails and hair bows, Raggedy Ann, white bobby-sox and Mickey Mouse/nursery rhyme sheets, are clear symbols to simulate the child. Moreover, the call to the reader/fathers to force sex on their sleeping daughters is blatant in this *Playboy* text (e.g., "Naturally, she digs forceful father figures, so come on strong, Big Daddy!"). Again, as in the cartooned sex/violence images of *Playboy*, there is no suggested harm (physical or emotional) to the alleged child from such a "forceful father figure." The double entendre of "come" on strong, urges fathers/readers to use violence for full sex entry.

23) Incest/Rape (8/75, advertisement). This image of a developing adolescent—apparently handcuffed for giving trouble to parents—is especially meaningful due to the real life cases of such young women and girls who have been tied to beds by parents or guardians and forced to perform sexually. It is especially useful to note that this photo is an advertisement for *Playboy's* once "harder" magazine, *Oui*, which used even stronger child and violent sex educative material than did *Playboy*. The incestuous and sadistic information links sex and violence and again suggests that the young girl (Jane) is getting what she deserves, with pleasure for all.

24) Simulated Lesbian/Incest (7/81, p. 108). Photographer David Hamilton provides *Playboy* with "private" scenes of (foreign) nude, young girls whom he portrays as "cousins," embracing and displaying themselves for the reader's entertainment. Publicly displayed images of these youngsters (unsubstantiated as either cousins or lesbians) is not presented as possibly harmful for the girl models now or later, when they gain their age of majority.

25) Incest/Rape of "Retarded Nymphette" (11/76, p. 147). As in cartoons, *Playboy* photos have generally utilized "themes" to exploit child nudity. "Sex in Cinema" has been a theme which permitted *Playboy* to "report" explicit pictures of nude children in foreign films and/or sexually graphic but unscreened outcuts from American films. This photo uncritically and glibly describes a "retarded nymphette" about to be "ravished" by her "father" figure.

26) Incest/Father-Daughter (11/80). Using a now famous actor/director and a well known child star, this film outcut portrays a father apparently about to perform oral sex on his young daughter. Again, *Playboy's* text artfully suggests that incest is harmless for a father or his child.

27) Adolescent and Simulated Lesbian (8/71). This typical Hamilton photo-essay "peeps" at (foreign) young girls during the "growth" stage. Hamilton poses the girls as self-exploring and lesbian. Despite the documented abuse of nude models (from obscene phone calls to violent rape-murder), the harmless, artistic nature of posing is emphasized and no possibility of present or future harm to the young girls from sex display is presented.

28) Teen Nude (8/78, p. 238). Relying upon the sexually mature appearance of the youngster to legitimize the (now illegal) sexual exploitation of an underage youth, *Playboy* knowingly used this nude photo of Natassja Kinski at 17 years of age. The use of voluntarily nude young "actresses" further undermines the sensitivity of readers regarding the capability of young persons, such as 15-year-old *Penthouse* pet Tracy Lords (9/84), to give consent to their irreversible appearance in public sex displays. The Attorney General's pending legislation will require a 21-year-age-of-consent cap for nude/sex models. Not surprisingly, the cap is opposed by the sex industry.



29) "Pseudo-Child" (4/76, cover). Fantasizing child sex for the reader, *Playboy* dresses the explicit, sexually seductive, half-nude adult in a white virginal petticoat, black patent Mary Jane shoes and white tights, finishing with a little-girl blond hair-do. She sits on a white bedroom rocker, encircled by child symbols in her pink, blue and white wallpapered bedroom. Clutching her (surrogate *Playboy* reader) white "bunny" to her full breast and surrounded by her small crushable, vulnerable pastel-colored dolls and stuffed animals, she gazes out at the reader with a little-girl, "come-hither" pout. Similar semi-nude child-adults are now regular features in sexually explicit magazines, films and videos. (Note that this April 1967 *Playboy* is the magazine our two little children are examining on the *Washingtonian* cover.)

Several medical and photo-montage experts examined this cover. Each independently concluded that two, perhaps three bodies were combined to create this cut-and-paste female image. The child clothing and props were all carefully designed to create child arousal stimuli by blurring perceptual distinctions between child and adult females. As in cartoons, technically deceptive photos suggest to both normal and pedophile juvenile and adult readers that the child is a woman and the woman is a child and thus both children and woman may be envisioned as appropriate sexual objects.

30) "Peeping" (11/71, p.174). An ostensibly natural, "private" scene of two nude youths in love provides public entertainment for *Playboy* viewers. This may be said to undermine the sensitivity of readers regarding the right of children to attain their majority before giving consent to sex displays. These two youngsters are seen as under 18. The 21-year-age-of-consent is meant to provide youth with an opportunity to mature prior to being legally acceptable as at-risk nude sex objects. That is, such models serve, irreversibly, as a stimulus to the imaginations and possible behaviors of some portion of the public large.

## VII: PENTHOUSE CHILD "SEX EDUCATION" PHOTOGRAPHS

31) A 12-Year-Old Sex Object (1/76, p.54). This explicit *Penthouse* display included graphic genital and anal exposure of an apparent 12-year-old child. For several months following this photo-story, *Penthouse* conducted a "guessing game" with prizes for readers who guessed the "real" age of "Baby Breeze." Eventually the publisher claimed the English "Baby" to be 21 years old (unsubstantiated), further blurring perceptual distinctions between child and adult females as appropriate sexual objects for both normal and pedophile juvenile and adult readers.

32) A Six-Year-Old Sex Object (1/81, p.133). This *Penthouse* model's face alone (as it appeared in the opening photo of this photo-essay) was shown to doctors attending Dr. Reisman's seminar for pediatricians at Georgetown University Hospital. From the model's face, the pediatricians judged her to be six years of age. As this photo-essay continued, the "child" attained breasts and became a "woman," and graphic genital exposure and images of "fantasy" violence were added. The repeated magazine genre theme both in cartoons and later in photos has been a blurring of distinctions between child and adult females as appropriate sexual objects for both normal and pedophile juvenile and adult readers.

## VIII: HUSTLER CHILD "SEX EDUCATION" PHOTOGRAPHS

33) Incest/Child Molestation (1/76, p. 82). Arguably, the small boy has been manually stimulated to erection for this illegal, "spontaneous" photo essay, implying the harmlessness of mother and son sex.

34) Child Assault (2/75, p. 68). This extensive photo essay pictures a nude young girl with a clothed middle-aged man. The youngster has not attained pubic hair as yet, or it has been removed to suggest a much younger child.*

35) Scout Display (10/76). *Hustler* often dresses their child or adult sex models in Brownie, Girl Scout, Camp Fire Girl, Candy Stripe uniforms, etc., in photo-essays. Based upon general research conducted on "paired stimuli" (See discussion in Volume I of the "Reisman Report"), genital/anal displays of nude young models dressed in children's uniforms would place some such uniformed children at increased risk of assault from associationally stimulated normal and pedophile juvenile and adult readers.

36) Child Sex Display (8/83). The "little girl" is displayed genitally and anally. Allegedly an adult, the text claims, "You would be surprised what a 'little girl can do...'" As always, these phtots systematically blur the social, physical, and emotional distinctions between female children and adults as appropriate sexual targets for normal and pedophile juvenile and adult readers. This photo repeats the same sex educative cartoon information discussed earlier, suggesting that adult-child sex/violence is fun and harmless physically and emotionally for even the youngest of children.

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*NOTE: Child Surrogates: the increased use of shaved female genitalia in all three magazines continues to simulate children as sex objects for the stimulation of both normal and pedophile juvenile and adult readers.

The following 36 cartoons and photos are numbered as per foregoing discriptions.



THE 36 CARTOONS AND PHOTOS

HAVE BEEN OMITTED.

# SELECTED FINDINGS

## Child Depictions

### Basic Facts:

49% (2,971) photographs
34% (2,016) cartoons
17% (1,017) illustrations

| PRINCIPAL CHILD | AND | OTHER CHARACTER *Where Depicted* |
|---|---|---|
| 47% female | | 49% male |
| 32% male | *SEX* | 35% female |
| 21% both/other | | 16% both/other |
| | | |
| 39% 3-11 years | | 78% adults |
| 26% 12-17 years | | 7% 3-11 years |
| 16% fetus-2 years | *AGE* | 7% 12-17 years |
| 14% pseudo children (*) | | 6% unspecified |
| 5% unspecified | | 2% fetus-2 years |
| | | |
| 85% Caucasian | | 85% Caucasian |
| 3% Black | *RACE* | 3% Black |
| 12% Other minority | | 12% Other minority |

### Sample Child Depictions (Nonadditive)

29% nude/genital display (visuals only)
21% visually exposed/sexualized
20% genital activity
16% sexual encounter with adult
10% force
10% killing/murder/maiming
6% internal genital ("pink") exposure (visuals only coded)
4% sex with animals/objects

### Share of Child Depictions by Magazine**

*Playboy*: 8 avg/issue (5% of *Playboy* cartoons/visuals)
*Penthouse*: 6 avg/issue (4% of *Penthouse* cartoons/visuals)
*Hustler*: 14 avg/issue (12% of *Hustler* cartoons/visuals)
*Playboy* highest year: 1971 (N=187, or 16 per issue)
*Penthouse* highest year: 1972 (N=131, or 11 per issue)
*Hustler* highest year: 1978 (N=228, or 19 per issue)

Over 9,000 scenarios in *Playboy, Penthouse* and *Hustler* were identified as depicting characters under 18 years of age. From this population pool, a mere 6,004 scenarios met the project's unusually narrow criteria for the analysis of child depictions.[17]



## Adult Crime and Violence Depictions

### Basic Facts:***

42% (6,273) photographs
36% (5,338) cartoons
22% (3,243) illustrations

| VICTIM | AND | OFFENDER *Where depicted* |
|---|---|---|
| 46% male | | 54% male |
| 43% female | *SEX* | 22% female |
| 11% both/other | | 24% both/other |
| | | |
| 66% 18-39 years | | 57% 18-39 years |
| 15% 40-60 years | | 17% 40-60 years |
| 3% 61 + years | *AGE* | 3% 61 + years |
| 16% unspec/mixed | | 23% unspec/mixed |
| | | |
| 85% Caucasian | | 82% Caucasian |
| 2% Black | *RACE* | 2% Black |
| 13% Other minority | | 16% Other minority |

### Sample Crime and Violence Depictions: (Nonadditive)

56% violent props (Visuals only)
32% nude and/or sexualized victims
14% killing/murder
14% assault/battery
12% sex dealing/prostitution
12% violent sex act
12% other violent activity
11% white collar crime

### Share of Crime and Violence Depictions by Magazine:

*Playboy*: 21 avg/issue (12% of cartoons/visuals)
*Penthouse*: 16 avg/issue (10% of cartoons/visuals)
*Hustler*: 32 avg/issue (26% of cartoons/visuals)
*Playboy* highest year: 1976 (N=490, or 41 per issue)
*Penthouse* highest year: 1980 (N=271, or 23 per issue)
*Hustler* highest year: 1984 (N=568, or 47 per issue)

## AGGREGATE SHARE OF CHILDREN, CRIME AND VIOLENCE BY MAGAZINE

*Playboy*: 29 average per issue
*Penthouse*: 22 average per issue
*Hustler*: 46 average per issue

* The description of "pseudo-child" provided in the Attorney General's Commission on Pornography (1986, Vol. I, p. 618) reads: "Pseudo-child pornography or 'teasers' involve women allegedly over the age of eighteen who are 'presented in such a way as to make them appear to be children or youths.' Models used in such publications are chosen for their youthful appearance (e.g., in females, slim build and small breast); and are presented with various accountrements designed to enhance the illusion of immaturity (e.g., hair in ponytails or ringlets, toys, teddy bears, etc.). 'Pseudo-child pornography' is of concern since it may appeal to the same tastes and may evoke responses similar or identical to those elicited by true child pornography."

** For rationale of estimates, see *Overview of Project* (Volume I), Table I, "Average Total Number of Features Per Magazine," and Table II, "Average Number of Cartoons and Visuals Per Issue Containing Child Imagery" (pp. 95-96).

*** For rationale of final 14,854 estimate, (originally 14,692) see *Overview Project* (Volume I), Table I, "Average Total Number of Features Per Magazine" (p. 95), and Tables "Crime and Violence Data" (p. 133), "Crime and Violence Cartoon Data" (p. 134), and "Crime and Violence Visual Data" (p. 137).

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NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN

MARCH 24, 1988

Judith A. Reisman, Ph.D.
President
The Institute for Media Education
P.O. Box 7404
Arlington, VA 22207

Dear Judy:

Many, many thanks for honoring our request and providing at no cost the hundreds of copies of the "Executive Summary: IMAGES OF CHILDREN, CRIME AND VIOLENCE IN PLAYBOY, PENTHOUSE AND HUSTLER MAGAZINES" and for sending them to our mailing lists of criminal investigators working cases of missing and sexually exploited children.

I have carefully studied the Executive Summary and strongly urge all those concerned with the welfare of children to thoroughly review the document and give heed to the many disturbing implications contained therein for the protection of children.

This study must be read by all those concerned with the ways pornography and violence in the media affect the incidence of child sexual exploitation and abuse. In support of this thought, you may like to know some of my professional background and investigational findings.

Prior to my coming to the National Center as its Deputy Director, I was the Program Manager for the Louisville-Jefferson County KY Exploited & Missing Child Unit. This police/social work Team was the first in the nation created to provide detection, investigation, and protective services on behalf of youth as well as apprehension and prosecutory services against adults criminally exploiting children through prostitution, pornography, or child sex rings in the Louisville SMSA.

From July, 1980, through February 1984, the police/social work Team of the E.M.C.U. investigated about 1,400 cases of children suspected of being victims of sexual exploitation. 54% (756) of the children were found to be victims and an addtional 31% (431) of the children were considered probable victims although lacking sufficient proof for court proceedings.

During this time period, the E.M.C.U. prosecuted hundreds of adults for various crimes involving the sexual exploitation of children. Over 40 major cases involved the successful prosecution of adults involved with over 12 children each. In one particular case, investigators thought there were

up to 320 child victims. At the time of arrest of and/or service of search warrants, ALL of these adult predators were found with various forms of adult pornography and in most cases child nudes and/or child pornography. Over 4 years, the E.M.C.U. Team learned to expect to always find adult pornography as such was used by the adult offenders for their own sexual arousal, for self validation of their own sexual deviation(s), for extortion of child victims or other adults, and for the deliberate and planned lowering of inhibitions of child victims.

Truly, the media you have identified can be devastating in affect in protecting children and gives real cause for concern and study when child erotica seems to be on the increase in popular literature. Please keep in touch with all current updates and new initiatives.

Again, many thanks for the multiple copies of the report and all your efforts on behalf of children.

Cordially,

/S/ John

John B. Rabun, Jr., .ACSW
Deputy Director
Technical Assistance

# Memorandum

Subject

18 U.S.C. Sec. 2251 - 2252

To OJJDP Division Managers
Roberta Dorn
Mary Witten Neal

Date

22 APR 1988

From Verne L. Speirs
Administrator, OJJDP

Please be advised that I have received a memorandum from Charles A. Lauer, General Counsel, regarding the report "Images of Children, Crime and Violence in Playboy, Penthouse and Hustler Magazines, Executive Summary" that was recently received in the Office.

Please review the following relevant portions of the memo from the Office of General Counsel and notify all of your staff immediately:

> "18 U.S.C. Sec. 2251-2252 provides criminal penalties for certain acts involving the sexual exploitation of children.

In connection with Judith Reisman's Report, staff should be cautioned that the knowing receipt or distribution of certain visual depictions (if the depictions are of minors engaged in sexually explicit conduct) contained in the Report or the reproduction of these visual depictions for distribution through the mail, as provided in Sec. 2252(a)(1) and (2), may subject the individual to the criminal penalties provided in Sec. 2252(b).

Please advise all staff that the report should not be duplicated or sent through the mail."

cc: Charlie Lauer
Diane Munson
Sharon Wagner
Joe Ellis
Kay McKinney
Buddy Howell